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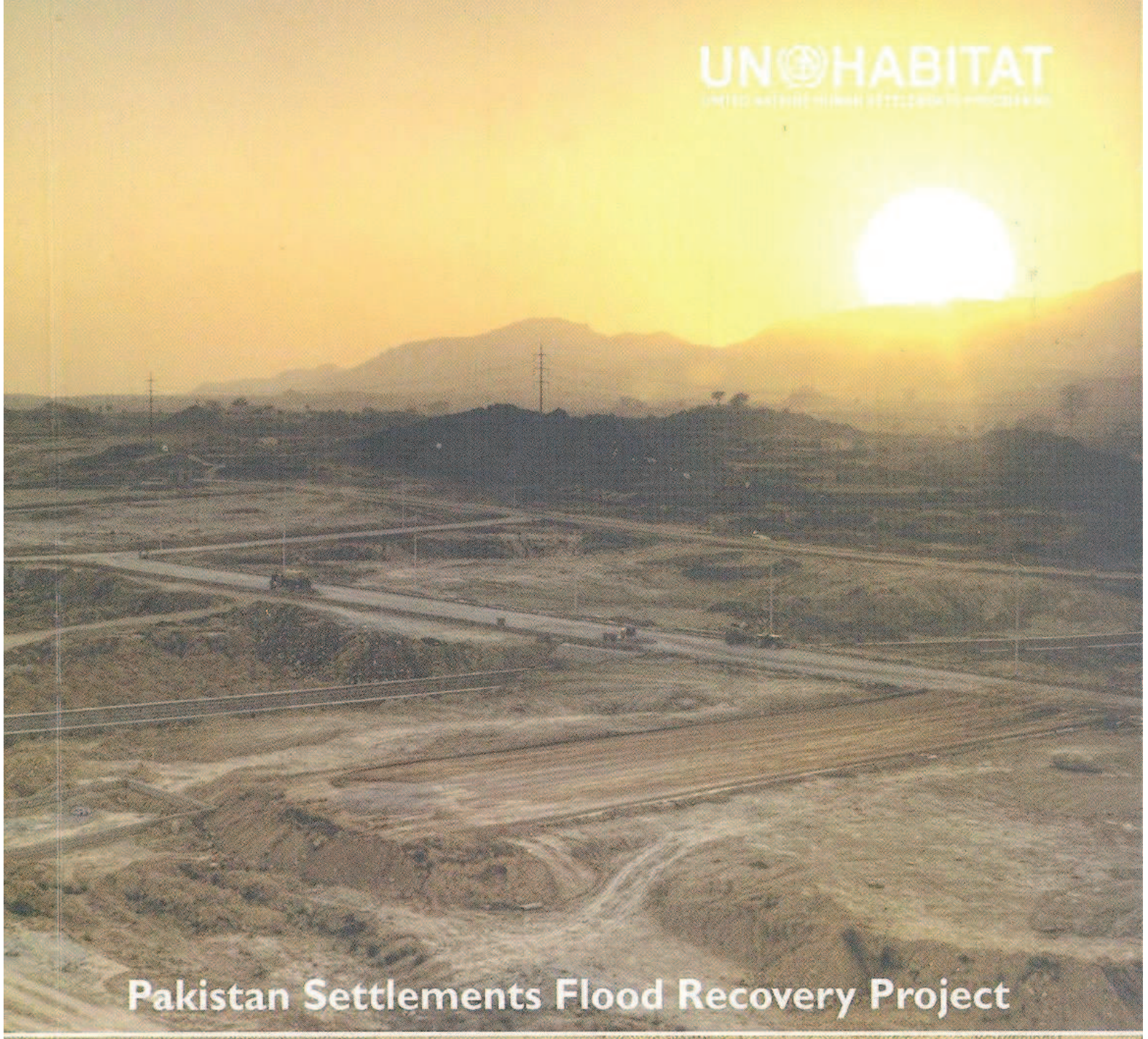

Pakistan Settlements Flood Recovery Project

A GUIDE ON LAND AND PROPERTY RIGHTS IN PAKISTAN

2011

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A GUIDE ON LAND AND PROPERTY RIGHTS IN PAKISTAN

UN HABITAT
UNITED NATIONS HUMAN SETTLEMENTS PROGRAMME

2011

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Introduction

UN-Habitat Pakistan is implementing 'Pakistan Settlements Flood Recovery Project (PSFRP)' in four provinces i.e. Balochistan, Khyber Pakhtunkhwa, Punjab and Sindh in the wake of heavy monsoon rains in July 2010 that ravaged 100,000 square kilometres of land in Pakistan affecting more than 20 million people. This project is funded by the Government of Japan, in response to UN-Habitat's integrated proposals on shelters, WASH and community infrastructure. The project also addresses some of the issues on land, housing and property rights arising out of project implementation.

In responding to any initiative or intervention on housing and land, one has to have an understanding of the complex land administration system in Pakistan. Accordingly, as a first step, a team of legal experts successfully prepared a simple Guide to introduce the principle elements of land administration system in this country. This Guide is the result of this initial endeavour.

'A Guide on Land and Property Rights in Pakistan' has been designed and prepared in the context of PSFRP. It is merely a guide compiled to facilitate the basic understanding of the major principles of Pakistani land administration system. It can be of use to donor agencies, international affairs organizations, national civil society organizations, lawyers and community leaders engaged in relief, rehabilitation or development or other similar works that necessitate some basic information about the general features of the rural land administration system in Pakistan. It may also be used by district and provincial administrations throughout the country.

The Guide elaborates the land administration system in settled areas, types of land ownerships, transfer and sale of land, acquisition of land, tenure and the rights of tenants/occupants etc. It is a general and brief introduction with basic facts and law.

This is the first edition of the Guide, which is also being published on UN-Habitat Pakistan's website (www.unhabitat.org.pk). It is intended to have the Guide periodically updated based on the feedback by the stakeholders. It is, therefore, requested that all interested parties provide their valuable comments and suggestions to us in order to further improve the Guide in its successive editions.

UN-Habitat Pakistan
December 2011

Country Geographic Location
Pakistan
Kilometers

Gilgit Baltistan
CHINA
Khyber Pakhtunkhwa
Mingora
Timergarah
Kohat
Mardan
ISLAMABAD
AJK
Disputed Area
FATA
AFGHANISTAN
Lahore
Punjab
DG Khan
Quetta
Sibi
Muzaffargarh
Rajanpur
RY Khan
INDIA
Balochistan
Jacobabad
IRAN
Larkana
Sindh
Hyderabad
Karachi
Thatta
Arabian Sea
Legend
UN-HABITAT in Pakistan
Country Office
Provincial Office
Field Office
Province Boundary
District Boundary

Abbreviations

AC	Assistant Commissioner
AJK	Azad Jammu & Kashmir
BOR	Board of Revenue
CDA	Capital Development Authority
CNIC	Computerized National Identity Card
DC	Deputy Commissioner
DCO	District Coordination Officer
DDO	District Disbursement Officer
DDO-R	Deputy District Officer Revenue
DG	Director General
EDO-R	Executive District Officer Revenue
FATA F	Federally Administered Tribal Areas
FSC	Federal Shariat Court
GoP	Government of Pakistan
KPK	Khyber Pakhtunkhwa
MBR	Member Board of Revenue
NWFP	North West Frontier Province
PDMA	Provincial Disaster Management Authority
PIU	Produce Index Unit
PLD	Pakistan Legal Decisions
PTD	Permanent Transfer Deeds
PTO	Provisional Transfer Orders
RO	Revenue Officer
SMBR	Senior Member Board of Revenue
TIP	Tax on Immovable Property
UC	Union Council

1. Defining Land in Pakistan

a) Property is any tangible or intangible thing that can be "owned" by or vested in a person. It can be 'tangible' when it exists temporally/physically or it can be 'intangible' when it does not exist temporally/physically, like an intellectual property right.

b) The terms 'land' and 'property' are used often-interchangeably under the Pakistani laws. Land in Pakistan is considered immovable property.

c) In Pakistan, a distinction is drawn between 'moveable' and 'immovable' property. In other jurisdictions, the same distinction exists, but under other names (like 'real' property and 'chattels' in the United Kingdom).

d) In Pakistan, the definition of immovable property[1] is as follows:

> 'Immoveable property' includes land, buildings, benefits to arise out of land and things attached to the earth, or permanently fastened to anything attached to the earth, hereditary allowances, rights to ways, lights, ferries and fisheries.

But does not include:

> i. Standing timber, growing crops or grass;
>
> ii. Fruit upon and juice in trees whether in existence or to grow in future; and
>
> iii. Machinery embedded in or attached to the earth, when dealt with apart from the land.

e) The 'moveable property' is defined with reference to the immovable property.

'Moveable property' means property of every description except immoveable property'[2]. It means that all other property that is not immovable property is included in the concept of movable property. The standing timber, growing crops or grass, fruit upon and juice in trees whether in existence or to grow in future and the machinery embedded in or attached to the earth are also movable property.

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[1] Section 2 of the Registration Act 1908 and section 3 of the General Clauses Act 1897.

[2] Section 2 of the Registration Act 1908 and section 3 of the General Clauses Act 1897.

f) It is important to note that some of the concepts governing moveable and immovable property are distinct and distinguishable from one another. So what may be true of moveable property may not necessarily be true or requisite of immovable property.

2. Who Can Own Land?

a) The property rights are protected under the Constitution of Pakistan, 1973, as well as under many special and specific laws that deal with various types of property and various aspects of property rights.

b) Articles 23, 24, 172 and 173 of the Constitution of the Islamic Republic of Pakistan deal with private property rights.

c) Article 23 declares that:

> 'Every citizen shall have the right to acquire, hold and dispose of property in any part of Pakistan, subject to the Constitution and any reasonable restrictions imposed by law in the public interest'.

d) Article 24 makes the following provision with respect to the acquisition of the private property:

> 'No property shall be compulsorily acquired or taken possession of save for a public purpose, and save by the authority of law which provides for compensation therefore and either fixes the amount of compensation or specifies the principles on and the manner in which compensation is to be determined and given'.

e) Article 172 states that:

> 'Any property, which has no rightful owner shall, if located in a province, vest in the Government of that province and in every other case, in the Federal Government'.
>
> It simply means that if either the federal or the Provincial Government does not own a property, then private individuals shall own it.

f) All the lands, minerals and other things of value within the continental shelf or underlying ocean beyond the territorial waters of Pakistan shall vest in the Federal Government.

g) And the mineral oil and natural gas within the province or the territorial waters adjacent thereto shall vest jointly in equal proportions in that province and the Federal Government.

h) Under Article 173, the Federal Government and the Provincial Governments can grant, sell, dispose or mortgage any property that vests in them. These Governments can purchase or acquire property. All properties acquired for the purposes of the federation or of a province shall vest in the Federal Government or the concerned Provincial Government.

3. History of Land Administration

a) The historical evolution of the land revenue system in Pakistan goes as far back as the early Muslim rule in the sub-continent, in the thirteenth and fourteenth centuries. Sultan Ala-uddin Khilji (1255–1316)[3] was the first Indian ruler to introduce a system of land administration. Mughal Emperor Akbar's Minister for Revenue Affairs, Todar Mal (d. 1659) is credited for laying down the basic foundations of the land revenue and land administration system now prevalent in India, Pakistan and Bangladesh.

b) The British improved and formalized the system of land administration. They introduced legislations pertaining to the rights and responsibilities of owners of land vis-à-vis the State, the relationship between land owners and their tenants, the rights and responsibilities of various categories of tenants, a system of adjudication of disputes in matters pertaining to land and also set out in detail the powers and duties of various categories of Revenue Officers.

c) During the British period[4], a number of land related legislations were enacted most of which are still in force e.g. the Transfer of Property Act of 1882, the Punjab Tenancy Act, 1887 and the Punjab Land Revenue Act of 1967 that is based on the Land Revenue Act of 1887 that is practically followed all over Pakistan and Jammu and Kashmir with minor amendments to reflect local customs and traditions. They also appointed revenue officials from Patwari, local Headman to the District Land Collector[5] who had administrative as well as judicial powers in addition to powers to control the Police.

d) The land administration system is carried out within the framework of the laws that have already been mentioned. The field officers of the Indian Civil Service[6] have also produced valuable material in the shape of the Land Settlement

---

[3] The Muslim ruler who ruled the from Indo-Pak sub-continent from 1296 to 1316.

[4] Usually termed as the British Raj, the British Period in India started in 1757 with the rule of the East India Company in major parts of India. It was formalized in 1857 with the Indian War of Independence and ended in 1947.

[5] Normally called 'Deputy Commissioner' and 'District Magistrate' appointed under the Land Revenue Act and the Code of Criminal Procedure, 1898, respectively.

[6] The British introduced Indian Civil Service through a competitive examination that was normally undertaken by Oxbridge graduates mostly of UK origin and some from India. It was one of the two steel frame works of the Indian empire along with Royal Indian Army through which the British controlled Indian colony.

Manual, Land Records Manual and Land Administration Manual which were and still are strictly followed all over India and Pakistan.

e) The system of the Deputy Commissioner was introduced by the British in the mid 19th century but was replaced in 2001 under a Devolution Plan. The office was replaced partly by the District Co-ordination Officer (DCO). The system is again under transformation. Some provinces have gone back to the old system while some are still in a transition process. DCO is though the head of a District but he does not have any revenue powers that are instead vested in District Officer (Revenue) who is also District Collector Revenue.

4. Laws Regulating Property Rights

a) There are numerous laws that regulate the ownership, transfer, acquisition, taxation, registration, tenancy etc. of immovable property. The following legislations are more important:

i. The Transfer of Property Act, 1882;
ii. The Punjab Tenancy Act, 1887;
iii. The Government Tenants Act, 1893;
iv. The Land Acquisition Act, 1894;
v. The Registration Act, 1908;
vi. The Colonization of Government Lands Act, 1912;
vii. The Sindh Tenancy Act, 1950;
viii. The Khyber Pakhtunkhwa Tenancy Act, 1950;
ix. The Provincial Land Revenue Acts of 1967;
x. The Baluchistan Tenancy Ordinance, 1978;
xi. The Land Record Manual;
xii. The Land Administration Manual; and
xiii. The Settlement Manual.

b) Some of these laws relate to land or property in rural areas, whereas some relate to urban areas, but some have overlapping applications to both types of the property but normally the laws that govern immovable property in rural and urban areas are different.

c) Land has been one of primary engines of the economy and the state often sought to control and regulate its produce. It is no accident, therefore, that, in Pakistan, the administration of agricultural land falls under the administrative control of the "Revenue" Department. So there are lots of instructions and policy guidelines that have been issued by the Provincial Governments or respective Boards of Revenues and these instructions and policy guidelines supplement the above mentioned laws.

5. What is Land Record?

a) A proper land record is necessary for private ownership and taxpaying purposes. This necessitates a detailed survey of the lands to know the exact details of land belonging to each owner in the village, i.e. how much total land each individual owns, in how many parcels and in what locations in a village. This needs a proper system for the measurement, identification, partition and the delineation of land holdings. This includes the details such as, how much of the total land of a land owner is cultivable, how much is uncultivated and how much land in a village was held in common (Shamilat-e-deh) for the common purposes of the village, i.e. graveyards, grazing grounds, community buildings, places of worship, schools, dispensaries, playgrounds, wells etc.

b) Keeping in view these details, a comprehensive Record of Rights (Misal-e-Haqiat) is prepared after carrying out a proper settlement operation of the land after every 25 years and later Jamabandi (prepared after every four years) and the Register of Mutations (Intaqalaat) are prepared.

c) There is a system to determine the type and quality of land to ascertain land productivity for the purpose of assessing land revenue on private or state lands that are given for cultivation to different classes of citizens under various schemes for the colonization of land. Land classification is done according to the fertility of land, availability, types and use of irrigation facilities and natural manure, etc. Then seasonal and periodic estimates of the production of various crops are made through crop inspection (Khasra Girdawary) and crop estimation registers (Khasra Jinswar).

5.1 Settlement Operation

a) The very basis for the preparation of the records of rights is the settlement operation[7], which has been continuously carried out since the mid-eighteenth century. Land settlement is a vast operation conducted by several experienced, full time officials of the Revenue Department under a Settlement Officer who is equal in rank to a Deputy Commissioner or District Collector. Settlement Operations are conducted at one time in one District and sometimes only in one Tehsil. During settlement operations, the powers of the Collector, which are ordinarily exercised by the Deputy Commissioner/District Officer (Revenue), are transferred to the Settlement Officer.

b) There are two basic objectives of undertaking a 'Settlement Operation':

i. To conduct a survey of the entire area of a District, undertake measurement and mapping of various parcels of land in every village (Revenue estate, Mauza or Mahaal) of the District, including state owned and privately owned lands, forests, rivers, roads and habitations. The ultimate purpose of taking these measurements is to prepare the "Record of Rights" (Misal-e-Haqiat) which includes a village map (Latha or Shajra-e-Kishtwar), a Record of Rights (Jamabandi revised record of rights compiled after every four years), Shajra-e-Nasab (pedigree of village land owners), Wajib ul Araz and in, some cases, also Riwaj-e-Aam (register of customary usage rights,) i.e. water rights, grazing rights, rights of land including demarcated forests, rights of the tenants, general rights and obligations of land, special customs and information about service providers of village (e.g. barber, potter, blacksmith, etc.); and

[7] Most of the areas in Pakistan have been subject to the settlement operation in which the land holdings have been consolidated, demarcated in various units (acres), soil classified and land revenue assessed. Some areas are still unsettled and in these areas, the land administration is not very regular.

ii. To access the total land revenue due from a village and then apportion the total land revenue amongst various land holders in the village.

c) The land revenue is one of the sources for taxes, so there is an established system of land revenue assessment. Various steps for the fixation of land revenue include:

i. Possible classification of local land according to its various characteristics like fertility, potential productivity on the basis of texture and quality of its soil, availability/application of natural manure and the availability of water for irrigation, i.e. canal irrigated, wells or rain fed;

ii. Estimation of the yield of various crops on the basis of land classification in a particular area and crop cutting experiments to determine the average yield per kanal[8] for all crops grown on various types of land in the area or village;

iii. Calculation of the gross produce of various crops in a village;

iv. Calculation of the expenses of the land owners on account of purchase of seed, watering, labour, fertilizer, hiring of bullocks, tractors etc. and the share of the tenant; and

v. To work out the "net assets" of the land owners (by determining market price of produce and gross income from produce minus costs of production) and propose rates of land revenue to be paid by the village (e.g. one-tenth of net assets).

d) The entire settlement operation is run like a project. It takes about three to four years to complete it in a District. The Settlement staff undertakes the operation and when they complete the work, they hand over the newly prepared land records to the Collector of the District (Deputy Commissioner) and move on to another District. A land settlement operation is usually undertaken every 25 years from the previous settlement.

[8] A unit of the measurement of land that equals to 1/8 of an acre.

6. Basic Categories of Land

From the viewpoint of ownership or proprietorship, all land in Pakistan (including Azad Jammu & Kashmir and Gilgit-Baltistan) can fall into one of the three categories:

The categories of land are:

6.1 State owned land;

6.2 Private owned land; and

6.3 Village common land.

6.1 State Owned Land

Some portions of land in Pakistan are called State owned or "Crown" land (Sarkaari zameen). It means that its ownership or legal entitlement vests in the government. Government means the federal or provincial or local government though local governments do not have much land in their name and normally they have provincial governments' land under their control or use. State land may be classified as follows:

a) State land assigned to individuals for various uses including cultivation, storage etc. on a temporary basis. This type of land can normally be resumed by the state;

b) State land granted to individuals under various schemes like cattle breeding, horse studs etc. In this category, the ownership belongs to the state and it is possessed by the citizens on a temporary basis against a nominal annual rent to be paid by user to the state;

c) Governments used to grant lands to the influential citizens as Jaagir (gift, largesse). The Mughals and then British mostly did it. After independence, Jaagirs were abolished and the government resumed possession of lands;

d) State Land is cultivated directly under the State. Under this arrangement, the land is cultivated by tenants and agreed rent is paid either in cash or in kind to the state;

e) State land that is temporarily allotted on some payment schedule to the citizens under various colony schemes so that the citizens could make these lands cultivatable. After these are made usable or cultivatable, then the ownership may be transferred in the name of that citizen;

f) There are many parcels of state land that are under illegal occupation of the citizens and state does not have the will to evict them or does not want to evict them;

g) State lands that are under some government scheme or are under afforestation; and

h) State lands that are barren and are not under cultivation or cannot be made cultivatable due to its inhospitable terrain or unsuitable soil.

6.2 Privately Owned Land

a) Farmland usually falls under private ownership. Most owners of farmland use their land for agricultural farming and animal breeding. However, they set aside a part of their holding for the purposes of growing grass or raising firewood;

b) Farmland may be self-cultivated (khud kaasht) or cultivated through tenants who pay agreed rent to the owner either in cash or in kind;

c) Some owners of land get the land cultivated through servants or seasonal labour. It remains in the category of self-cultivated;

d) Private owners have full rights to sell, gift, exchange or dispose of their private land in any manner they wish subject to some legal limitations. For instance, the law of preemption imposes certain restrictions on the sale of rural land to people who are residents of other areas;

e) The Constitution and laws give equal rights of ownership, tenancy, and sale and purchase of land to women; and

f) The private owned land is subject to automatic inheritance under the Muslim personal law and the property rights devolve after the death of a legal owner on his/her legal heirs as per pre-determined shares under the implementation of a will, if any. The right to give away land under a will is also restricted under the Muslim personal law.

6.3 Village Common Land

a) The terms Shamilat or Shamilat Deh are universally used in Pakistan to denote village common land. The best translation of Shamilat in the English language would be "Common Land" or "Community Land";

b) Shamilat land is a grant given by the State, out of State land, to the owners of the village to be used for their common purposes and is usually granted at the time of settlement;

c) Shamilat land is that land in a village which is jointly owned and possessed by the landowners of that village and is meant to be used for the common purposes of the village community. Such common purposes include grazing grounds, firewood collection, graveyards, community buildings, mosques, schools, dispensaries, play grounds, village ponds, village roads, passages for the movement of cattle etc;

d) All persons recorded as owners of land in a village are also joint owners of Shamilat of the village, their shares being proportionate to the size of their holding vis-à-vis total farm land in the village;

e) When they sell their land, the share of shaamlaat also goes to the new buyer accordingly. Landowners cannot sell their share of Shamilat without selling a part or the whole of their landholding;

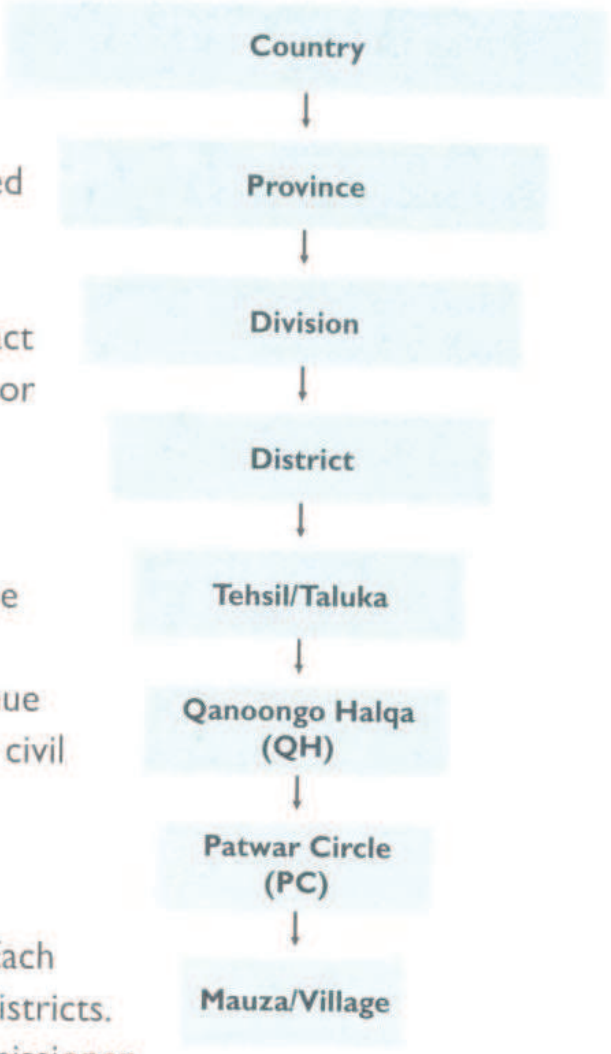
f) Similarly, co-owners of land cannot move to encroach upon more Shamilat land than is already allotted to them and encroachers can be ejected by moving an application before the revenue authorities; and

g) There is another category of shamilat in certain areas in Pakistan where no settlement has taken place. Under this category, large tracts of lands are jointly owned by many people and their shares are expressed in terms of fractions of the total area in one Khasra Number, a particular number allotted to that piece of land by the revenue authorities (e.g., Mr. Akram's share is 1/100 in Khasra Number 42 of revenue estate A).

Construction of water supply system on village common land in Jacobabad, Sindh, Pakistan

7. Basic Structure of Land Administration

a) The land matters are administered by the Revenue Department of the Provincial Governments. Even the land of the Federal Government is also handled by the Revenue Department of the Province. This is the department, with which every person has to come in contact with respect to any matter in relation to or arising out of land.



b) For administrative purposes, Pakistan is divided into provinces and Tribal areas. The provinces are divided into Divisions[9]. For example, Punjab is divided into nine revenue divisions. Commissioners, who are senior civil servants, are appointed by the Provincial Governments to head the Divisions.

c) The Divisions are divided into Districts. Each Division has approximately three to six Districts. A District is headed by the Deputy Commissioner or District Coordination Officer[10] to be appointed by the Provincial Government.

d) Districts are divided in Tehsils or Talukas. Each District has approximately three to five Tehsils or Talukas. Assistant Commissioner, Deputy District Officer (Revenue) or Tehsildaar/ Talukadar heads each Tehsil/ Taluka[11].

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[9] Before the devolution system introduced in 2001, Revenue Divisions were in all the provinces. The devolution system introduced by General Pervez Musharraf (1999-2008) abolished Revenue Divisions but now some provinces have resurrected the Revenue Divisions while some are in process of resurrection.

[10] In pre devolution era, the Deputy Commissioner who was also the District Magistrate headed district but the devolution changed it and replaced it with District Coordination Officer. The devolution system is again in flux and some provinces have reverted back to Deputy Commissioner and some are still in transition process.

[11] Some provinces have one more category i.e. subdivision that may consist of one or more Tehsils. In such areas, Subdivision is headed by Assistant Commissioner/Deputy District Officer(Revenue) while Tehsil is headed by Tehsildar.

e) The Tehsil/ Taluka is divided into Mauzaa (Revenue estate/Mahaal or village). The basic unit of land administration is a village (Mauzaa) and group of villages forms a Patwar Circle headed by a Patwari (or Tapedar in Sindh).

f) However, for administrative convenience, by combining a group of about 10 Patwar Circles is made a new unit called, Girdawar Circle headed by Qanoongoo (Supervisory Tapedar in Sindh). Two to three Girdawar Circles constitute a Revenue Officer's Circle and it is headed by Naib-Tehsildaar (Deputy Tehsildaar).

g) Two to three Revenue Circles together form a Tehsil and it is – the Tehsil – level where all the record of the land administration is maintained. The Tehsil is, accordingly, the principal unit of the Revenue Department.

8. Who does What in Revenue Administration

We will briefly discuss the functions and duties of some of the following very important revenue officials with whom every person or relief agency has to interact with in one way or the other.

Basic revenue officers/offices are:

8.1 Patwari or Tapedar;

8.2 Qanoongoo, Girdaawar or Supervisory Tapedar;

8.3 Tehsildaar or Mukhtiarkar;

8.4 Assistant Commissioner or Deputy District Officer (Revenue);

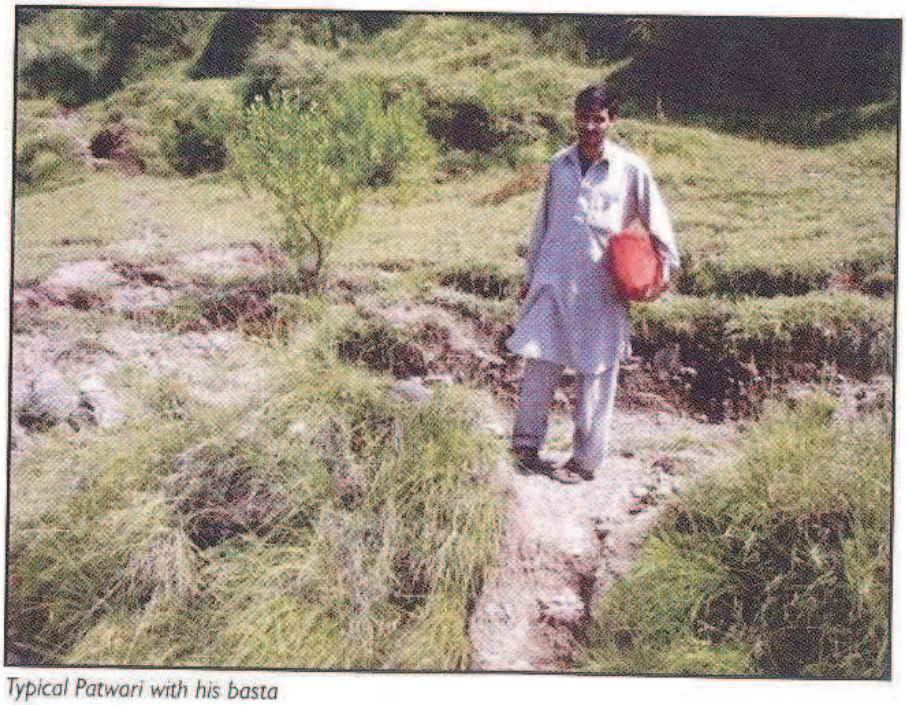
8.5 Deputy Commissioner or District Officer (Revenue);

8.6 Commissioner; and

8.7 Board of Revenue.

8.1 Patwari or Tapedar [12]

A Patwari is appointed and transferred by the Assistant Commissioner or Deputy Commissioner by whatever nomenclature they are called. A Patwari is the lowest official in the Revenue hierarchy but is the linchpin of the land administration. The functions performed by the Patwari make him the most important official of Revenue Department. Patwari has a big "Basta" (bag) to maintain all the land revenue record.



Typical Patwari with his basta

[12] Patwari is called Tapedaar in Sindh whereas in other three provinces and FATA, he is called Patwari.

Functions of the Patwari include:

- He is the custodian of all the records of land rights of the people;
- He records all the changes of ownership and tenancy in relevant registers of land record;
- He is a crop reporter who carries out harvest inspections of every field, which forms the basis of national statistics of area under different crops or for the levy of the many land related taxes;
- Patwari is the custodian of state property, located in a village and reports on any encroachment on state land and public roads;
- He is the village official to report on all the important happenings in the area like floods, rains, calamities, infectious diseases etc;
- He keeps up to date the particulars of landowners and tenants;
- He supplies copies of the revenue record to the public. The copies are required for any sale and purchase or creation of lien or charge or loan on any property;
- He is directly involved in the process of acquisition of private land by the state for any public purpose like construction of school, motorway etc;
- He assists the higher officials in allotment of resumed land to tenants under the land reforms schemes;
- He is the basic official in relief efforts as he facilitates suspension and remission of Government dues on private holdings, and is the main actor in disbursement of disaster related relief;
- He has additional functions like helping in de-limitation of constituencies, elections, population census and agriculture and livestock census; and
- In some provinces, Patwari also collects land related taxes and other taxes like loans on agricultural land advanced by banks.

8.2 Qanoongo/Girdaawar or Supervisory Tapedaar [13]

a) Next to the Patwari is the Girdawar. The periodical and yearly record maintained by the Patwari is inspected through various inspections and supervisory mechanism built in the revenue hierarchy. The Girdawar is supposed to carry out 100% check of the Patwari's work.

b) Girdawar is appointed and transferred by the Assistant Commissioner or Deputy Commissioner, by whatever nomenclature they are called.

8.3 Tehsildaar or Mukhtiarkar [14]

a) Tehsildar is the in-charge of a Tehsil. He supervises all the functions of the Patwari and Qanoongo and guides them and provides them leadership.

b) Tehsildar is a very important functionary of the revenue administration as the primary unit of this administration is Tehsil.

c) Tehsildar is the in-charge of a Tehsil. He supervises all the functions of the Patwari and Qanoongo and guides them and provides them leadership.

d) Tehsildar is a very important functionary of the revenue administration as the primary unit of this administration is the Tehsil.

e) He co-ordinates all the functions of the Patwaris and makes sure that those land records made by the Patwari are correct and updated.

f) The sale and purchases of the land is sanctioned and mutated by Tehsildaar.

g) Tehsildar approves all the taxes assessed by Patwari or he forwards these to relevant higher authorities.

h) He is sometimes assisted by the Naib-Tehsildaar (Deputy Tehsildaar) or the Naib Mukhtiarkaar.

I) Under the law, the Tehsildaar an Assistant Collector Grade I or an Assistant Collector Grade II under the Land Revenue Act 1967, the main enactment that confers powers on land revenue officers.

j) Tehsildar is a tenancy court. He adjudicates all the disputes between a landowner and a tenant including those relating to produce distribution, eviction etc.

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[13] The terms 'Qanoongo' and 'Girdaawar' are used interchangeably and he is called Supervisory Tapedaar in Sindh.

[14] In Sindh, Tehsildaar is called Mukhtiarkaar.

k) Tehsildaar belongs to the Provincial Service and is appointed and transferred by a Commissioner or Board of Revenue.

8.4 Assistant Commissioner or Deputy District Officer (Revenue) [15]

a) Assistant Commissioner or Deputy District Officer (Revenue) is the head of a Sub Division of a District.

b) In some areas, there is no difference between a Sub Division and a Tehsil whereas in some provinces, there are more than one Tehsil in a subdivision. A Tehsidaar heads each Tehsil whereas each sub division is head by Assistant Commissioner or Deputy District Officer (Revenue). If a Tehsil is a sub division also, then it will be headed by Assistant Commissioner or Deputy District Officer (Revenue) and below him will be a Tehsildaar.

c) Assistant Commissioner or Deputy District Officer (Revenue) is the chief representative of the Provincial Government in the area.

d) He exercises the powers of an Assistant Collector Grade I or a Collector and hears appeals against the orders of the Revenue Officers/Tehsildaars.

e) All the revenue work and relief work in the sub division is done under his supervision and control.

f) They are either from the Provincial Civil Service or the Federal Civil Service assigned to the Provincial Governments.

8.5 Deputy Commissioner or District Officer (Revenue)

a) Deputy Commissioner (DC) is the head of the revenue and land administration in a district and is the chief representative of the Provincial Government.

b) DC or DO-R is head of the land administration in a district with many original and appellate and revisional powers.

c) They are either from the Provincial Civil Service or the District Management Group of the Federal Civil Service assigned to the Provincial Governments and posted in the districts by the Provincial Governments.

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[15] In pre devolution era, the nomenclature was 'Assistant Commissioner' but it was changed to Deputy District Officer (Revenue) under Devolution Plan introduced in 2001. Some provinces are reverting back to the old system.

8.6 Commissioner

a) At the divisional level, the head of revenue administration is the Commissioner. The commissionerate system was introduced by the British but was retained till 2001 when the devolution system was introduced. Some provinces have reintroduced the commissionerate system whereas some are still in the process of transformation.

b) After devolution, the revenue powers of a Commissioner were given to the Executive District Officer (Revenue) (EDO-R) who was, though based in a district, had the revenue powers of a Commissioner.

c) Commissioner or EDO-R exercises the powers and functions of supervision and control of the subordinate revenue authorities and also acts as appellate and revisional courts.

d) Commissioner is the chief representative of Government in his/her Division and acts as the coordinator of Government's activities at the Divisional level.

e) Commissioner may be assisted by Additional Commissioner (Revenue) for revenue-judicial work but he/she is independent in its powers though the Commissioner can assign work to him.

f) If there is EDO-R, he/she has all the revenue-judicial powers of the Commissioner but he/she does not have other administrative powers of the Commissioner.

8.7 Board of Revenue

a) Provincial Board of Revenue (BOR) is at the apex of the land administration system. It is a statutory body.

b) BOR consists of many members and is headed by the Senior Member Board of Revenue (SMBR). Members of the Board of Revenue also act as Secretaries to government in their respective Department e.g. Member Colonies is the Secretary to the Provincial Government on Colony matters (land allotment) and Member Relief is the Secretary to the Provincial Government on relief matters.

c) BOR is the executive head of land administration system in a province. It is the Chief Advisor to the Provincial Government on the policies relating to land revenue, consolidation of holdings, land management, land reforms, settlement and rehabilitation, land taxation, allotment of lands, land acquisition etc.

d) It also acts as a Provincial Relief Commissioner. In other words, the Provincial Governments distribute, in an emergency like floods and earthquakes, the relief goods through it and it declares areas as calamity-hit to give land tax concessions. Now some of its functions are being transferred to the Provincial Disaster Management Authorities (PDMA).

e) It is the highest Revenue Court in the Province and hears appeals and revisions against the judgements and orders of Commissioners and Executive District Officers (Revenue).

9. Sources of Acquisition of Property Rights

Property rights may be acquired through many ways: outright sale-purchase, exchange, State grants (including evacuee rights acquired till 1975), inheritance, will, gift, preemption, mortgage, leases, licenses etc. As a general principle, no person can transfer a title or rights better than what one owns. The laws made by the Parliament and the personal laws of the concerned persons e.g. Muslim personal law or Hindu personal law, regulates these sources of acquisition and transactions.

9.1 Sale-Purchase

a) Sale-Purchase is the most common mode of acquisition of rights to own property for its beneficial use. The sale may be made between private individuals, allocation by a public authority through allotment, lease, auctions or ballot etc.

b) A private sale transaction has to conform to the basic ingredients of an ordinary agreement/contract, initiated by a:

i. Valid offer (proposal) by one party to sell a property;

ii. Unconditional acceptance by the other party to purchase the property;

iii. Payment of agreed consideration normally called price; the consideration can include exchange with another property; and

iv. Valid intention to sell and purchase the said property.

c) The sale and purchase agreement must be negotiated and executed freely, without threat, fear, inducement, coercion etc.

d) Under the laws of Pakistan, a verbal or an oral agreement is valid but is not preferred. It is better and safer if it is reduced to writing and duly recorded in official agency concerned after meeting the prescribed pre-conditions. This official process is called registration or mutation.

9.2 Inheritance

a) These are unearned property rights acquired after the death of an owner of a property on the basis of personal family laws applicable to the deceased's faith. Such rights devolve automatically on the legal heirs and become effective immediately on death though formalities may be accomplished later.

b) However, a person guilty of killing his/her relation is not eligible to receive from the estate e.g. if a son kills his father, he is disentitled to get his share in the

property. It is based on the principle, recognized by Islamic law also, that no one shall benefit from the proceeds of the crime.

c) A deceased person at the time of death leaves behind whatever property, it is subject to distribution under the relevant inheritance laws. However, this division of inheritance shall take place after settling of debts and payment of expenses on the deceased's burials etc.

d) Until late 1930's, inheritance was regulated by customs and traditions in the sub-continent and females' right to share in the inheritance was not recognized as per most of the customary laws. However, with the promulgation of various Shariat Application Acts[16], options were given for settling such matters according to pre-existing customary practices or the applicable personal law. Then this option was taken away and Sharia was applied and it was obligated to divide inheritance of Muslims as per Islamic law.

e) With enforcement of a new constitutional order in 1956, customs inconsistent with basic and personal laws applicable to a particular religious community were discarded. Consequently, no one was to be deprived of inheritance allowable in the personal law. Similarly, there were some other Shariat Application Acts[17] that have necessitated that property of a Muslim deceased shall be divided as per Islamic law and no one can be deprived of inheritance property on the excuse of the customs of a family or an area.

f) Now it is a settled position that property of a deceased shall be distributed amongst the legal heirs as per the personal law of the deceased. In other words, the property of a Muslim deceased person has to be divided as inheritance as per Muslim personal law[18] and the property of a Hindu deceased person has to be divided as inheritance as per Hindu personal law.

g) Inheritance gives unearned property rights to a person and these rights take effect after the death of an owner of a property on the basis of blood relation and are recognized by the personal family laws applicable to the deceased's faith. Such rights devolve automatically at the death.

h) There is no distinction in the Islamic law of inheritance between movable property and immovable property or between ancestral property and self-

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[16] Shariat Application Act in 1935, 1937, 1948, 1950, 1952 for different part of Pakistan.

[17] Shariat Application Act in 1962, 1964, 1983.

[18] Muslim personal law of the inheritance is detailed and technical; so it is stated here in great brevity just for introduction.

acquired property. Same shall apply to the material benefits from intellectual property rights.

Under the Sunni law, there are three classes of heirs, namely:

(1) Sharers, (2) Residuaries and (3) Distant Kindred.

- "Sharers" are those who are entitled to a prescribed share of the inheritance like parents, son, daughter, wife, husband etc;
- "Residuaries" are those who take no prescribed share, but succeed to the "residue" after the claims of the sharers are satisfied e.g. grand father, paternal uncle etc; and
- "Distant Kindred" are all those relations by blood who are neither Sharers nor Residuaries e.g. son of the brother, daughter's children and their descendants, son of the paternal uncle etc.

i) The question as to which of the relations belonging to the class of sharers, residuaries or distant kindred, are entitled to succeed to the inheritance varies and it is determined by the principle that nearer in degree excludes the more remote. Thus, if the surviving relations were a father and a father's father, the father alone will succeed to the whole inheritance to entire exclusion of the grand father, though both of them belong to the class of sharers.

j) The first step in the distribution of the estate of a deceased Muslim, after payment of his funeral expenses, debts, and legacies, is to allot respective shares to such of the relations as belong to the class of sharers and are entitled to a share. The next step is to divide the residue (if any) among such of the residuaries as are entitled to the residue. If there are no sharers, the residuaries will succeed to the whole inheritance. If there be neither sharers nor residuaries, the inheritance will be divided among such of the distant kindred as are entitled to succeed. The distant kindred are not entitled to succeed so long as there is any heir belonging to the class of sharers or residuaries.

The Shias divide legal heirs into two groups, namely:

1) Heirs by consanguinity, that is, blood relations; and
2) Heirs by marriage, that is husband and wife.

Heirs by consanguinity are divided into three classes. These classes are as follows:

i. Parents and children and other lineal descendants;

ii Grand parents, brothers and sisters and their descendants; and

iii Paternal, and maternal uncles and aunts, of the deceased and of his parents and grand parents and their descendants.

Of these three classes of heirs, the first excludes the second from inheritance, and the second excludes the third.

k) However, a person guilty of killing his/her relation is not eligible to receive from the estate e.g. if a son kills his father, he is disentitled to get his share in the property of the deceased. It is based on the Islamic law principle that no one shall benefit from the proceeds of his/her crime. Under the Sunni Law, a person who has caused the death of another, whether intentionally, or by mistake, negligence, or accident, is debarred from succeeding to the estate of that other. Homicide under the Shia Law is not a bar to succession unless the death was caused intentionally.

l) The right of an heir apparent comes into existence for the first time on the death of the ancestor, and he/she is not entitled to any property until then; so any interest in the property to which he/she would succeed as an heir, would devolve to him/her if he/she survived the ancestor. A, a Sunni Muslim has two sons, B and C. B dies in the life time of A, leaving son C. A then dies leaving C, his/her son, and D, his/her grandson. The whole of A's property will pass to C to the entire exclusion of D. In other words, the son of the predeceased son is, therefore, not an heir. This is the traditional view held by most of the scholars.

m) However, the above-mentioned rule of exclusion was changed by 'The Muslim Family Laws Ordinance 1960'. It gave the right to the offspring's of the pre-deceased child (grandchildren) to inherit from a grandfather's property. This right of grandchildren from a predeceased son to inherit from a grandfather's property was challenged in the courts in 1999 and was declared against Islam. The matter is at present pending in appeal before the Supreme Court of Pakistan and provisions of the 1960 Ordinance are operative until the court takes final decision.

n) We have given some details about inheritance rights for the Muslims, as about 95% of the citizens of Pakistan are Muslims. Inheritance matters of the people of other religious faiths are dealt with in accordance with the personal laws of their choice.

9.3 Will

a) It is permissible for a citizen of Pakistan to make a Will about the disposal of a property.

b) Every person, male and female, of sound mind may dispose of his property by Will. Only an adult can make a Will and a minor (under 18 years of age) cannot make a Will.

c) The form of the Will is immaterial and it can be made either verbally/orally or in writing.

d) The Muslims (Sunni)[19] can make a Will for a maximum of 1/3rd of the estate and the rest 2/3rd shares have to be compulsorily divided among the legal heirs. If the Will is made in favour of one or more of the legal heirs, then it can be implemented when all other legal heirs consent to the Will, otherwise the whole property shall be divided among the legal heir as per predetermined shares.

e) According to the Shia law, a testator may leave legacy to an heir so long as it does not exceed 1/3rd of his/her estate. Such a legacy is valid without the consent of other heirs, but if the legacy exceeds 1/3rd, it is not valid unless the other heirs consent[20].

f) Furthermore, under Islamic law, a person on deathbed is not allowed to make a Will. Even if he/she makes a Will while he/she is on their deathbed, it may not be acted upon unless the legal heirs agree.

g) A non-Muslim can make a will in his/her own life to gift away his/her entire estate unless regulated by his/her personal law that shall be binding.

9.4 Gifts

a) Gift (called Hiba) is a transfer of property made immediately, and without any exchange, by one person to another and accepted by the latter. Gift means transfer of property in substance by one person to another without consideration (price)[21].

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[19] There are two main sects of the Muslims in Pakistan: Sunni and Shia. Vast majority is Sunni who follow Hanafi school of thought of Imam Abu Hanifa (699 - 67 CE or 80 - 48 AH). Shia sects follow Imam Jaffar Saadiq (702 - 765 C.E. or 83 - 148 AH). In inheritance, will, gift etc. matters, their personal law is applicable.

[20] Mullah Mahomedan Law, Mansoor Book House, Lahore, 2010; P-150.

[21] There is one category of gift called Hiba-bil-Iwaz (gift after valid consideration). It is close to sale.

b) Every Muslim of sound mind and not a minor may dispose of his/her property by Gift. However, a gift made under undue influence, coercion, deceit and or domination is not valid.

c) A gift made by a Muslim during death illness (marz-ul-maut) cannot take effect beyond a third of his/her estate after payment of funeral expenses and debts, unless the heirs give their consent, after the death of the donor, to the excess taking effect. Nor can such a gift take effect if made in favor of an heir unless the other heirs consent after the donor's death.

d) A gift is distinguished from a Will in many respects. It may be made of the whole of the donor's (the person who makes a gift) property and it may be made to any donee (a person to whom a gift is made) including an heir.

e) A gift may be made for a reason or without reason. Normally, the reasons for making a gift may include: natural love and affection for an offspring, relative or somebody else, recognition of services rendered to a cause, devotion for a social or religious institution like a Waqf/ Trust dedicated for a specified cause etc.

f) No formal format is required to make a gift. It can be made orally as well as in writing, but it is always better and safer to reduce it to writing and get it registered with the relevant authorities.

g) It is essential to the validity of gift that the donor should divest himself immediately of all ownership and dominion on the property of the gift.

h) It is essential to the validity of a gift that there should be:

i. A declaration of gift by the donor;

ii. Acceptance of the gift on behalf of the donee; and

iii. Delivery of possession of the gifted property by the donor to the donee.

i) If these conditions are complied with, then the gift is complete. However, no transfer of possession is required in case of a gift by a father to his/her minor child and in other cases, the transfer of possession may be notional only as mere handing over of the keys of a gifted house. The donor may revoke a gift at any time before delivery of possession, as gift is not complete before the delivery of the possession. A gift may be revoked by the donor itself, but not by his/her heirs after his/her death.

j) A gift may be revoked even after the delivery of possession except in the following cases:

i. When the gift is made by a husband to his wife or by a wife to her husband;

ii. When the donee is related to the donor within the prohibited degree;

iii. When the donee is dead;

iv. When the thing given has passed out of the possession of the donee by further sale, gift or otherwise;

v. When the thing given is lost or destroyed;

vi. When the thing given has increased in value, whatever be the cause of the increase;

vii. When the thing given is so changed that it cannot be identified, as when wheat is converted into flour by grinding; and

viii. When the donor has received something in exchange (iwaz) for the gift.

k) Once possession is delivered, nothing short of a decree of the court is sufficient to revoke the gift. Neither a declaration of revocation by the donor nor even the institution of a suit for resuming the gift is sufficient to revoke the gift. Until a decree is passed, the donee is entitled to use and dispose of the subject of gift.

9.5 Preemption [22]

a) Another source of acquisition of rights in a property is the right of preemption. The preemption law in Pakistan was based on the local customs and principles of Common Law but the Federal Shariat Court declared certain provision of prevalent preemption law as against the teachings of Islam, so the existing law relating to preemption was changed accordingly so as to bring it in conformity with the Injunctions of Islam as set out in the Holy Qur'an and Sunnah[23]. The new law has practically restricted the right of preemption to only certain categories of neighbours.

b) The 'right of preemption' means a right to acquire by purchase an immovable property in preference to other persons by reason of such right. Right of preemption means that a person has first right to purchase a particular property. In other words, he/she has a first right of refusal as it is commonly described. The law of preemption is based on the principle that a neighbor has a first right to purchase a property so that an alien does not enter the areas as it may disturb his/her right of the quiet enjoyment of his/her property provided that he is ready to tender a market price to the seller.

c) The right of preemption is available only in case of sale of immovable property. However, some sales are excluded from the right of preemption. The right of preemption is not available in the following cases:

i. Transfer of an immovable property through inheritance, will or gift;

ii. A sale in execution of a decree for money or of any order of a civil, criminal, revenue or any other Court or a Revenue Officer or any local authority;

iii. Exchange of agricultural land; and

iv. Transfer of an immovable property for a consideration other than valuable consideration, such as the transfer of an immovable property by way of dower or composition in a murder or hurt case.

d) Similalry, no right of preemption is available in case of the sale of:

[22] Preemption allows a third party to intervene, in certain circumstances, and claim a right of first refusal in the event land in a rural area is sold. The circumstances in which preemption is allowed are few and mostly the close neighbors have the right to preemption.

[23] Judgement of the Court reported as PLD 1991 FSC-80.

i. Waqf [24] property or property used for charitable, religious or public purpose;

ii. Property owned by the Federal or a Provincial Government or a local authority; and

iii. The property acquired by the Federal or a Provincial Government or a local authority in pursuance of any law.

e) The right of preemption vests only in the following persons:

i. Firstly, in "Shaft Sharik" that means a person who is a co-owner in the corpus of the undivided immovable property sold;

ii. Secondly, in "Shaft Khalit" that means a participator in the special rights attached to the immovable property sold, such as right of passage, right of passage of water or right of irrigation; and

iii. Thirdly, in "Shaft Jar" that means a person who has a right of preemption because of owning an immovable property adjacent to the immovable property sold.

f) The right of preemption of a person shall be extinguished unless such person makes demands of preemption in the following orders, namely:

i. 'Talb-i-Muwathibat' that means immediate demand by a preemptor in the sitting or meeting (Majlis) in which he has come to know of the sale, declaring his intention to exercise the right of preemption;

ii. 'Talb-i-Ishhad' means demand by establishing evidence; and

iii. 'Talb-i-Khusumat' means demand by filing a suit.

g) When the fact of sale comes within the knowledge of a preemptor through any source, he/she shall make demand (Talb-i-Muwathibat). Where a preemptor has made demand, he/she shall, as soon thereafter as possible but not later than two weeks from the date of knowledge, send a notice (Talb-i-Ishhad) in writing attested by two truthful witnesses, to the seller/vendee, confirming his/her intention to exercise the right of preemption. Where a preemptor has satisfied these two requirements, he/she shall file a suit (Talb-i-Khusumat) in the court of competent jurisdiction to enforce his/her right of preemption.

[24] Waqaf under Islamic law means dedication of a property for some religious or charitable purpose. The ownership of the waqaf property does not vest in anybody and it vests in Allah or the beneficiaries.

9.6 **Evacuee Rights**

a) Refugee families who migrated from India after independence (1947) were allowed to occupy and indeed own property in accordance with approved claims on the basis of evidence by two respectable persons about their abandoned property in India. They were allotted state land or land abandoned by the Hindus and Sikhs that had immigrated to India.

b) 'Permanent Transfer Deeds' (PTD) were issued in their favour by Settlement and Rehabilitation Authorities especially set up by the government for the purpose.

c) Likewise, initially, evacuee properties appropriated by refugees from Indian Administered Kashmir were allowed to be retained by them under 'Provisional Transfer Orders' (PTO), later converted into permanent rights in 1973. In 1975, the Settlement Department was wound up and pending work was transferred to Revenue Department.

10. How are Property Rights Transferred?

10.1 Introduction

The 'right to transfer' an ownership is a fundamental property right.

Every lawful owner has a right to sell, transfer, gift, mortgage etc. his/her rights. Such rights are considered part or incidence of ownership. Transfer of property rights also occur on devolution of inheritance in addition to sale, gift etc.

a) Every sane 'major' (adult) owner of a right in a property can transfer his/her right. Ordinarily, age of 'Majority' under the laws of Pakistan is eighteen years and above. Every minor who is under eighteen years of the age can also transfer his/her rights through his/her legal guardian duly appointed by a court of competent jurisdiction i.e. Guardian Court with the permission to sell the property. No natural guardian like father and mother can sell such rights of a minor unless one is appointed legal guardian by the Guardian Court and has the permission to transfer the rights. Similarly, the legal guardian duly appointed by a court with permission to transfer the rights can only transfer the rights of the insane.

b) The governing laws in transfer procedures are the following:

i. Land Revenue Act, 1967. The law is provincial and has been adopted by all the provinces with minor changes. This is the basic law dealing with the records of rights and transfers through mutations as detailed later;

ii. General law describing and regulating the transfers of interests in property (sale, lease, mortgage etc) is the Transfer of Property Act, 1882;

iii. The Registration Act, 1908 that details the registration of the documents processes and procedures. The law is applicable on any registration including registration of transfer/sale deeds; and

iv. Local and special laws i.e. laws made by the private housing societies, cooperatives, mutual societies, Cantonment Boards etc.

10.2 Modes of Transfer

There are following four modes of transfer:

a) Mutation of a right in revenue records from one person to the other. It is done under the Land Revenue Act, 1967. The law is applicable throughout Pakistan

with minor provincial amendments. It is mostly done in rural areas though sometimes second procedure i.e. registration is also done before mutation.

b) Registration of the transfer/sale deed with the relevant registration authorities. These authorities are the revenue authorities i.e. Assistant Collector/Tehsildar/ Mukhtiarkar. The registration is done under the Registration Act, 1908. It is mostly done in urban areas. In some urban areas, there is a compulsion that registration shall be done even if it is followed by mutation. The registration does not automatically enter the name of the parties in the record of the rights maintained by the revenue authorities though law requires that a copy of the registration shall be sent to the revenue authorities who shall make mutation as per registration. Normal transfers affected through registered deeds are accorded a degree of credibility and agreements are accepted without further or elaborate inquiry in open assembly of landowners of the village/estate during process of mutation.

c) Mutation followed by the registration. It is a combination of both the above-mentioned processes. This combination is better and safer as it creates more documentary evidence for the titles for ownership.

d) An oral or verbal agreement is made for the transfer of a right in land. It may be a sale, purchase, gift etc. Sometimes, the parties follow the above-mentioned processes but sometimes, no such transfer process is followed. Under Pakistani laws, an oral agreement is valid but it may create complications if transfer processes are not followed e.g. one party may resile from the commitments. In such case, the aggrieved party has to go to the court for a declaratory judgement to establish its rights through valid evidence and then the right can be transferred in its name. When a degree of a court is obtained, then revenue authorities do only mutation and no registration process is followed nor is it required.

10.3 **Mutation Process**

a) Land Revenue Act, 1967 and rules made thereunder from time to time regulate the mode and manner for transfer of property rights with respect to rural lands whether acquired by inheritance, purchase, state grant, allotment, mortgage, gift or otherwise.

b) The transfers may be oral or in writing but when it is reported to the revenue authorities, they have to use elaborate 'Forms' that have been specified in the

rules for recording comprehensive details of report with respect to the incident of transfer or alienations so that nothing is left for uncertainty and confusion.

c) Any interested person himself and a minor through his/her legal guardian may report to the Patwari his/her intention to transfer the rights. If such a transfer has already taken place verbally or through sale agreement, or the owner has died, then report has to be made within three months of the incident.

Patwari[25] after receiving information of transfer of right has to:

i. Record such report in the 'Daily Diary' (Roznamcha), register maintained by him;

ii. Furnish, a free of cost, copy of the entries of Daily Diary to the person reporting the event;

iii. Inform within a week about such report to the concerned Union Administration/Council or Town Committee for public display; and

iv. To proceed further to make entries in the 'Mutations Register' (Register Inteqalaat) for eventual verification/attestation by Revenue Officer who is normally Assistant Collector Class I or II (Tehsildar or Naib-Tehsildar).

d) A Revenue Officer is required to inquire into the correctness of all reported entries before approval or rejection as the case may be except inheritance, acquisition through a registered deed, or by or under an order, judgement or decree of a Court.

e) The Revenue Officer is required to note description of rights in the prescribed Register duly signed by the person whose rights are to be acquired after such person is identified by two respectable persons, preferably by Lambardar[26] or member of the Union Council concerned whose signature or thumb-impressions are obtained by the Revenue Officer, on the register of mutations.

f) Then such proposed transfer has to be verified in an open Common Assembly (Jalsa-e-Aam) of landowners of the area before finally approving the transfer - mutation in the revenue record. This verification in open assembly in the local area is done within one month of the entries in the Registers.

[25] Called Tapedaar in Sindh.

[26] Village Headman appointed by the revenue authorities.

g) Where a Revenue Officer makes an order with regard to the acquisition of any right in any land, an entry is to be made in the relevant periodical records of rights by inserting in it a description of the right acquired and by the omission from such record of any entry in any record previously prepared, to update and correct the land records.

h) If an information/report about any transfer of a right in a property is not so processed or acted upon within the 3-months time-line, then a report along with the explanation for the delay is required to be reported to the Collector of the District/DC/DOR as any process after lapse of this period needs his/her approval.

i) Change of possessions of the property so transferred is verified and entered during bi-annual Gardawri/Field Inspection by the revenue officers.

10.4 **Registration Process**

a) The documents for the transfer of the property rights can be registered with the specified and designated revenue authorities. Some transfers ought to be compulsorily registered under the Registration Act, 1908 while the others are not, but a voluntary registration may be done if so desired by the relevant stakeholders.

b) Registration of rural land transfers is not obligatory in most parts of Pakistan but it is a must in urban transfers, primarily for official property records and tax collection.

c) Transfers that ought to have been registered but are not registered, are not admissible in judicial proceedings of ownership disputes.

d) Delayed registration of the transfers of rights is possible but with some safety procedures and imposition of penalties, depending on the amount of time lapsed.

e) Registration documents are prepared on Stamp Papers that are purchased by the parties from the Government offices or authorized agents. Registration requires a registration fee also.

f) However, important aspects of the registration are that the Sub-Registrar/ Revenue Officer[27] checks the entitlement to transfer, identity of the persons doing transaction and that whether the requisite Stamp Duty has been paid.

[27] Under the law, Registrar/Collector is the real authority but he has Sub-Registrar under him.

g) The agricultural leases or any lease for a term over 12 months is required to be registered and will be subject to Stamp Duty.

10.5 Procedures when Transfer is Contested

a) With respect to rural lands, the 1967 Revenue Act and relevant Rules require a Revenue Officer to settle the claims of transfer of property rights in an open Common Assembly in the relevant revenue estate in the presence of persons whose shares are to be extinguished. It is mandatory to bring fairness, authenticity and transparency in the system.

b) In case, it is not possible to evolve consensus in the open common assembly or some dispute arises that cannot be solved amicably through Jirga or Panchayat (processes of informal dispute resolution), then the matter is determined through Revenue Courts established under the land Revenue Act, 1967 or eventually by Civil Courts.

Normal dispute resolution procedures are:

i. Appeals before a higher revenue court. All issues of law and facts may be agitated or challenged in an appeal;

ii. Review of an order by the same officer on grounds of an error patent on face of the record, clerical or arithmetical errors etc. with the caveat that order of the predecessor may only be modified with prior approval of the next above Revenue Officer;

iii. Revision petition to a higher authority. Revision is maintainable on the ground of jurisdiction only i.e. that a Revenue Officer has overstepped his/her jurisdiction or has done some thing for which he/she did not have jurisdiction; and

iv. Civil Suits: If the parties are not satisfied from the Revenue Courts/ Officers or some complex question of law and facts is involved, then Civil Court's hierarchy becomes the eventual course of last resort.

c) Sometimes, when one party exhausts all the options at all the tiers of the revenue hierarchy including the Board of Revenue, other party challenges the decision of the revenue authorities before a Civil Court and then the matter can go up to the level of the Supreme Court in another round of litigation.

11. Rights and Duties of Tenancies

11.1 Introduction

a) The tenancy matters relating to the agricultural land in Pakistan are informally regulated by local customs and formally by specific legal instruments. The tenancy laws are administered by provinces. Each province has promulgated its Tenancy Act which is an almost replication of the Tenancy Act of 1887 introduced by the British in Punjab.

b) The Tenancy Act was based on local customs and general principles of Common Law developed in the United Kingdom during last one thousand years. The Acts regulate the relationship between tenants and also between tenants and landlords (owners of the land).

c) Under the tenancy laws:

i. 'Land' means land which is not occupied as the site of any building in a town or village and is occupied or has been let for agricultural purposes or for purposes subservient to agriculture or for pasture, and includes the sites of buildings and other structures on such land (section 4);

ii. 'Tenant' means a person who holds land under another person, and is liable to pay rent for that land to landlord; and

iii. 'Landlord' means a person under whom a tenant holds land, and to whom the tenant is liable to pay rent for that land, even if he/she is not its owner.

11.2 Types of Tenancies

a) There are many categories of tenants though some have extinguished with the afflux of time and subsequent legislations.

Tenants can be classified into the following categories: (a) Occupancy tenants, (b) tenants for a fixed term exceeding one year and (c) tenants from year to year; and (d) tenants at will.

b) The occupancy tenant was the one who, at the time of coming into force of the tenancy laws, occupied a land for more than 2 generations or for a period of at least 20 years without paying any rent in addition to the land revenue and applicable rates and cesses[28] or a tenant who first owned land and later ceased to hold, but remained in occupation continuously[29] or a tenant who settled with

[28] (Section 5 (1) (a) Punjab Tenancy Act, 1887).

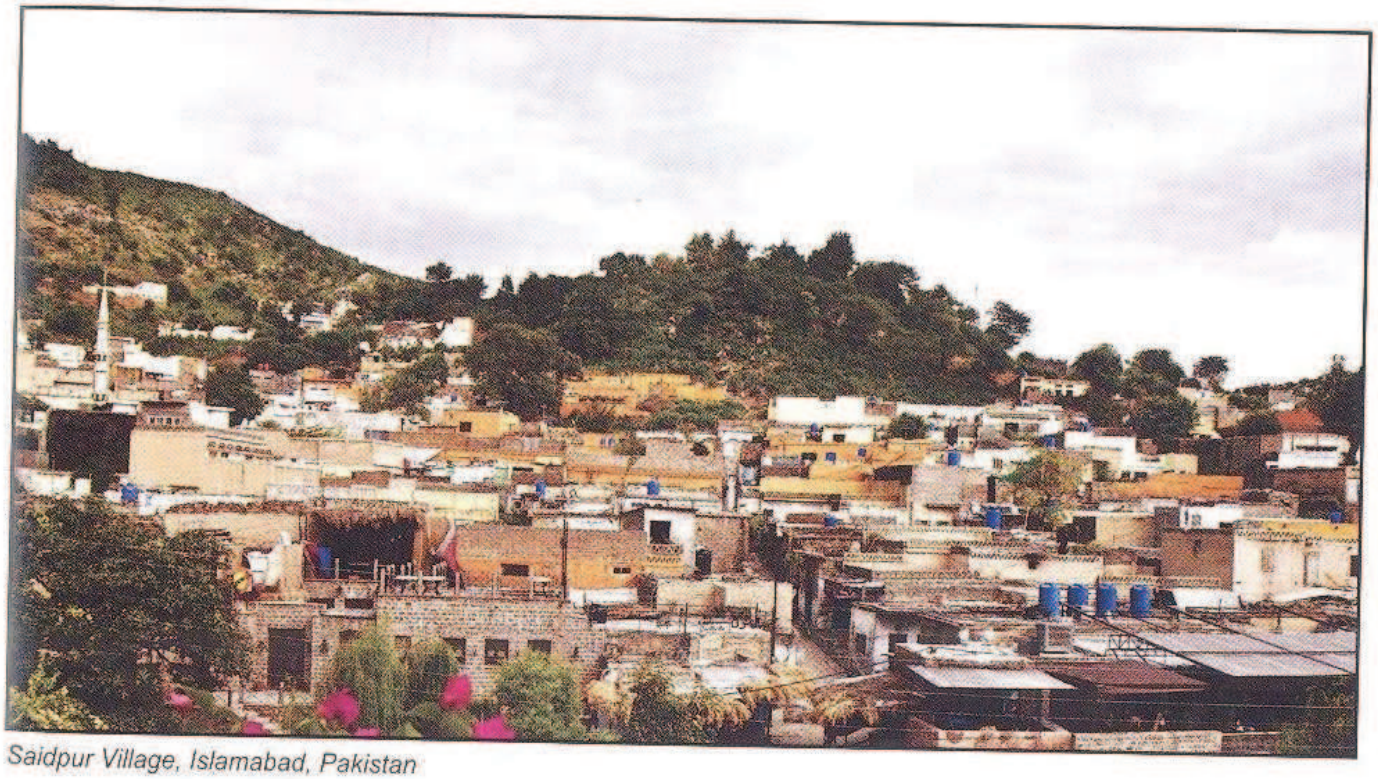
[29] (Section 5 (1) (b) Punjab Tenancy Act, 1887).

or by the founder of village or estate as a cultivator and remained in occupation since the promulgation of statute. This type of the tenancy that has more legal rights is no more thereafter 1952.

c) The tenant for a fixed term is a tenant who under a contract or a decree or orders of a competent authority is a tenant for a fixed term i.e. three years. This type of the tenancy exists and is subject to the applicable laws.

d) The tenant from year to year is the one who is a tenant for one year and then leaves the tenancy or can get it extended. This type of the tenancy still exists and is subject to the applicable laws.

e) The tenant at will who was neither an occupancy tenant nor a tenant for a fixed term or one year and could be ejected any time. This type of tenancy is also non-existent now.



Saidpur Village, Islamabad, Pakistan

11.3 Rights and Duties of the Tenants

a) A tenant is entitled to tend, cut and harvest the produce of his/her tenancy in due course of husbandry without any interference on the part of his/her landlord. The tenant is entitled to the exclusive possession of the produce except where rent is taken by division of the produce. In that case, the tenant is entitled to the exclusive possession of the whole produce until it is divided but the landlord is entitled to be present at, and take part in the division of the produce; and is entitled to the possession of his/her share. (Section 12)

b) The owner of land and the tenant both can do improvements in a tenancy i.e. a work which is suitable to the tenancy and is consistent with its conditions and increases/continues to increase its value.

c) 'Improvement' means any work that is suitable to the tenancy, by which the value of the tenancy has been and continues to be increased, and which is either executed directly for its benefit, or is, after execution made directly beneficial to it.

Improvement includes:

i. Construction of wells and other works for storage or supply of water for agricultural purposes;

ii. Construction of works for drainage and for protection against floods;

iii. Planting of trees, reclaiming, enclosing, leveling and terracing of land for agricultural purposes and other works of a like nature;

iv. Erection of buildings required for more convenient or profitable cultivation of a tenancy; and

v. Renewal or reconstruction of any of foregoing works that increase their value.

d) However, improvement does not include such clearances, embankments, levelling, enclosures, temporary wells and water channels as are made by tenants in the ordinary course of cultivation and without any special expenditure. (Section 4 (19))

e) If a tenant does not consent to an improvement, then a landlord can make improvements after obtaining permission for that from the Collector. The tenant may raise objections before the Collector against the proposed improvement[30].

f) After obtaining permission and making improvements, a landlord may apply to the Collector for enhancement of rent. If the improvement made by the landlord ceases to exist at any time, the Collector, upon the application of the tenant, may decrease the rent.

g) A tenant may also make improvements on his/her tenancy with landlord's express or implied consent and until compensated for the improvements made,

[30] Section 5 (1) (c) Punjab Tenancy Act, 1887. All references to 'Section' in this chapter relate to Punjab Tenancy Act, 1887.

he/she cannot be ejected and rent of his/her tenancy cannot be enhanced. (Section 68)

h) Where a tenant is ejected in execution of a decree or in pursuance of a notice of ejectment, he/she is not entitled to any compensation for any improvement made or started by him/her after the institution of suit or service of notice. (Section 66)

i) Where lease is granted to an existing tenant for over 20 years, such a tender would disentitle the tenant from claiming compensation against any improvements earlier made by him on the tenancy. (Section 67)

j) Where a tenant makes a wasteland cultivable, not being a joint owner of such a land, upon ejectment from such land by the landlord he/she is entitled to payment of compensation for such value addition (called 'disturbance') in addition to compensation for any improvements made by him/her. Such compensation is determined by the Revenue Court or Revenue Officer and should not exceed 5 years rent of the land. (Section 69)

k) After a notice is served on a tenant for payment of arrears of rent or for ejectment and such tenant has not filed a suit to contest ejectment, the tenant has a chance to apply to the Revenue Officer for determining the compensations to which he/she is entitled for improvement and/or disturbance. The Revenue Officer has to first determine the amount of compensation and order the landlord to pay the same after deducting any arrears, which are determined as payable by the tenant. Until the landlord pays the amount of compensation, the ejectment of tenant has to be stayed by the Revenue Officer. (Section 71)

l) The tenant for a fixed term under a contract or a decree or order of competent authority may relinquish tenancy without notice at the end of that term. (Section 35)

m) Tenants other than tenant for a fixed term may relinquish tenancy by giving verbal or written notice of intention to relinquish on or before the 15th day of January. The notice should be with respect to the agricultural year next following, relinquishing tenancy at the end of that year. Instead of the notice, the tenant may apply to the concerned Revenue Officer to cause the notice to be served. A tenant's failure to give notice would make him liable to pay the rent of tenancy for any part of ensuing the agricultural year during which it was not let by the landlord or cultivated by landlord himself. (Section 36)

n) A tenant cannot relinquish a part of a tenancy without the landlord's consent. (Section 37)

11.4 Ejectment of the Tenant

a) A tenant for a fixed term has to vacate the tenancy at the end of the term.

A tenant for a fixed term may be ejected during continuance of the term on following grounds:

i. If he/she uses the land in such a manner that it becomes unsuitable for the purpose for which it was held;

ii. If he/she fails to cultivate the land as per customs of the area without sufficient cause; and

iii. On any other ground which could justify ejectment under the contract or a decree or order e.g. non-payment of rent agreed between the tenant and the landlord. (Section 40)

b) A tenant who is not a tenant for a fixed term can be ejected at the end of any agricultural year. (Section 41)

c) The landlord may apply to a Revenue Officer for the ejectment of the tenant or for the service on the tenant of a notice of ejectment. (Section 43)

d) In case of yearly tenancies, the Revenue Officer may send a notice of ejectment upon the tenant. However, such a notice cannot be served after the 15th day of November in any agricultural year.

e) A tenant may file a claim for compensation or contest liability to be ejected within 2 months from the date of receipt of notice. (Section 45)

f) An ejectment order or decree can be executed only between 1st May and 15th June, unless the Revenue Court or the Revenue Officer directs otherwise. (Section 47). In all these ejectment cases, the Revenue Court may consider awarding of compensation to the landlord instead of ejecting the tenant, if such compensation would adequately satisfy the injury suffered by the landlord. (Section 48)

g) If a tenant's uncut or untethered crops are standing on any part of the tenancy, he/she cannot be ejected from tenancy until the crops have ripened and he/she harvests them. In such a case, the Revenue Court or Officer may fix fair and equitable rent to be paid by the tenant for the extended period or determine the value of standing crops and order the landlord to pay the same to the tenant and order ejectment forthwith. (Section 49)

h) If a tenant has been dispossessed without his/her consent from his/her tenancy (otherwise than in execution of a decree) he/she may, within one year from the date of his/her dispossession or ejectment, institute a suit for recovery of possession or occupancy, or for compensation or for both. (Section 50)

i) A tenant is not, during the continuance of his/her occupancy, liable to imprisonment on the application of his/her landlord in execution of a decree for an arrear of rent. (Section 97)

Landlord or a tenant shall be guilty of an offence punishable with imprisonment which may extend to one year or fine or with both, if:

i. A land-lord recovers from any tenant anything in the shape of a cess, village cess or other contribution or due or any other free service in addition to the rent payable;

ii. A landlord recovers from the tenant in lieu of the seed supplied to him anything in excess of the seed actually supplied;

iii. A landlord ejects a tenant forcibly or against the provisions of law; and

iv. Any tenant refuses or fails to vacate any land in compliance with an order passed by competent authority. (Section 116)

11.5 Jurisdictions and Procedures

a) The matters relating to tenancy are dealt with by the Revenue Courts. The Revenue Courts are simply the Revenue Officers acting in judicial capacity instead of executive capacity.

Revenue Court are:

i. Assistant Collector 2nd Grade[31];

ii. Assistant Collector 1st Grade[32];

iii. District Collector[33];

iv. Commissioner/Executive District Officer (Revenue);and

v. Board of Revenue

[31] Normally powers of the Assistant Collector Grade II are conferred on Tehsildar or Naib-Tehsildar.

[32] Normally powers of the Assistant Collector Grade I are conferred AC/DDO-R or Tehsildar.

[33] Normally powers of the Collector are conferred on DC, DO-R, AC/DDO-R.

b) The Revenue Officers have jurisdiction to take cognizance of the following matters if any tenant or a landlord wants to raise such matter:

i. Proceedings for remission and suspension of rents;

ii. Application for ejectment of a tenant;

iii. Proceedings with respect to award of compensation for improvements or disturbance;

iv. Application for division or appraisement of produce;

v. Application for determination of rent payable for land occupied by crops uncut or un-gathered at the time of ejectment order and for evaluation of such crops or of sum payable to the tenant for labour and capital devoted by him/her;

vi. Application for service of notice of relinquishment;

vii. Application for service of notice of ejectment;

viii. Suit for enhancement or reduction of rent;

ix. Suit for recovery of possession or occupancy and compensation;

x. Suit relating to lease or conditions on which a tenancy is held;

xi. Suit for sums payable on account of village expenses;

xii. Suit for arrears of rent or money equivalent of rent; and

xiii. Suit for recovery of moneys claimed as due for enjoyment of rights in or over land or in water including rights of irrigation, rights over fisheries, rights of pasturage and forest rights.

c) Revenue Court may order a party to the proceedings to file a case in a Civil Court of competent jurisdiction for determination of a particular intricate question. Revenue Court can also fix a time limit for filing such a suit and in case of failure of a party to do so, it may decide such a question itself.

12. Taxes and Fees on Property Rights

12.1 Introduction

Taxes and fees are levied by the state on various aspects of the land and property rights. Obligatory payments to state or its agencies with respect to property ownership or its use are of many types.

Obligatory payments are:

i. Regular and compulsory payments for state from every owner unless exempted i.e. property tax;

ii. Regular and compulsory payments from every occupant of state land i.e. lease or license money; and

iii. Payment that becomes due in case of some voluntary act by the individual owner i.e. seeking transfer, sale, gift etc.

12.2 Kinds of Fees / Taxes

a) In case of rural lands, the first category of payments is called land revenue. It is payable by a landowner. The rate of land revenue is fixed during periodical settlements of lands after every 25 years or so taking into account the soil classification. The other category of the land revenue is called 'Fluctuating Revenue' which relates to specific crops grown and verified as such during bi-annual crop survey called 'Gardawri'. After 1972, land revenue for holdings below 12.5 acres has been waived.

b) State (Provincial Governments) receives its share from the rural land income with a statutory upward revision of revenues, not exceeding 25%, determined after a minimum of every 25 years that equals a 1% simple annual increase. The fixed ceiling was intended to incentivize and encourage investments, to improve agricultural productivity and output to ensure food security of growing populations, multiplied many times since independence. It is also intended to promote cash-crops like cotton that supply raw materials for industrial uses for domestic industry and exportable surpluses. For quite some time, the institution of periodical land settlements that helped update current status of land-use of the individual holdings and their classification has been almost abandoned for various reasons.

c) The owner of the land pays the land revenue if there is self-cultivation. If the land is in possession of a tenant, then it is the joint obligation of the owner of the land and the tenant, but tenants have certain safeguards in this regard under the tenancy laws.

d) The other compulsory tax is the Water Rate. It is levied as a service charge for provision of irrigation water facilities that is extensively subsidized by the state. Punjab and Sindh maintain a very extensive network of irrigation system and it is periodically expanded to bring additional lands under plough. However, the irrigation system in the Khyber Pukhtunkhwa Province and Baluchistan is not very developed and user charges are not in vogue either. In certain areas. Water Rate is either waived or replaced by Usher.

e) Usher is a form of a tax that is religious in nature. Islam ordains it. It was introduced in the 1980s. It is payable by the owners up to a maximum of 10% of the price of its produce. The irrigated lands pay Usher at a lower rate (5%) than the Barani land (10%) on the principle that where nature plays the dominant share in production systems and the farmers spend less, they have to pay more to the community and where human beings contribute more in terms of investment, sweat and toll, then a lesser share is payable. The Usher so paid becomes part of the public exchequer to be utilized preferably for the welfare of the local community.

f) In case of urban properties, an annual tax is payable for built up properties. However, small houses of a certain modest size and those owned by certain categories like widows or retirees are exempt from annual payments.

g) The second category of the taxes i.e. payment on occupancy is when the Provincial Government and Federal Government sometimes gives its land on lease or license to the citizens under various schemes like stud farms, grow more scheme, construction of amenities etc. These leases are given through public auctions or through some pre-qualifications and prescribed systems. The state charges regular and compulsory payments from every occupant of state land (in form of a lessee or licensee) and the payment may be determined by an open auction or some other pre-determined mode.

h) The third category of the taxes are the payments that become due in case of some voluntary act by the individual owner i.e. transfer of property rights after sale, gift etc. These taxes are paid at the time of mutation of the land record from the old owner to the new owner or at the time of registration of sale

deed with the local Registrar (Sub-Registrar) that is normally Assistant Collector/Tehsildar. (The processes are already discussed).

i) The request for the transfer of ownership, called mutation, can be given verbally or in writing to the Village Revenue Official [Halqa Patwari] or to a higher Revenue Officer. There is an official mutation fee to be paid to the revenue officials at the time of the mutation.

12.3 **Rates of Taxes**

a) Standard rates of taxes and obligatory fees are payable at the time of the property rights transfer through registered sale deeds. Both the urban and rural properties are subjected to pay such taxes. Such taxes depend on the declared value of the land being transferred and valuation of such land is always available in standardized valuation tables maintained by the Collector concerned for urban locations as per guidelines issued by the Provincial Board of Revenue. Rural lands are not subjected to such uniform scales.

b) Various rates of taxes or fee are levied on property transfers, except in cases of inheritance that is normally free of any such tax or fee.

Such taxes or fee include:

i. Stamp duty at the rate of 2% payable under the Stamp Act, 1899. The parties buy official Stamp-Papers to be used in preparation of 'Transfer Deed' that is then approved by the revenue officers. Security Printing Corporation of Pakistan prints the stamp papers on a special paper;

ii. Registration fee at the rate of 1% is levied under the Registration Act, 1908 as a service charge for recording the transaction in official record;

iii. Transfer of Immoveable Property Tax (TIP) at the rate of 1% under Local Government laws introduced in 2001. This tax is not payable when transfer is based on a gift to blood relations;

iv. Capital Value Tax imposed on transfer of property of the size of 10 Marla (two hundred and seventy two square feet is equal to one Marla) and more; and

v. In cantonment limits, normally a Transfer Tax at the rate of 3% of market value of property and nominal mutation fee is payable and this fee varies from cantonment to cantonment. Market value of the property is computed on the basis of valuation table prepared by the local Cantonment Board with approval of the Directorate of Military Lands and Cantonments[34].

c) Locally managed private housing cooperatives and companies charge some fee on transfer of properties when there is a sale and purchase of their plots. Such societies and companies do not pay such transfer fees to the government as they purchase lands in bulk and then sell it to their members or the public after plotting of such land and the sale and the purchase of the plots is an internal affair of a society.

d) Normally such taxes on the transfer like 'Stamp Duty', mutation fee, registration fee, valuation fee etc. are paid by the person acquiring rights/buyer. The capital gains or valuation tax is payable usually by a seller. However, the parties can agree on the payment by mutual agreement.

[34] There are slight variations in rates of such taxes and fee in various provinces but generally these are the rates.

13. Easement Rights and Licenses

13.1 Introduction

An easement may be simply understood as the right in relation to a property, which is claimed by a stranger who is the owner of another property. The most common example of easement is the 'right of way' of a person on another's landed property.

a) The law of easement has been in place in one form or the other since ancient times. Romans were probably the first to codify it in the sixth century and called it Servitutes or Servitudes. Under the Roman law servitudes were exceptions to the absolute ownership of a person in a property. These exceptions belonged, as rights, to another person and worked as constraints in the owner's enjoyment of properties.

b) The concept of easement rights was also recognised in the local laws of India in pre-colonial times. However, the British introduced the existing Easements Act, 1882 and it is based on the principles of the Common Law.

c) Easement is not exactly a right in the property or a right against its owner, but a right relating to the property by virtue of its existence at a particular place and time. It is as an interest in land owned by another person consisting in the right to use or control the land, or an area above or below it, for a specific limited purpose (such as to cross it for access to a public road)[35].

d) The Easements Act defines easement as a right which the owner or occupier of a certain land possess, as such, for the beneficial enjoyment of that land, to do and continue to do something, or to prevent and continue to prevent something being done, in or upon, or in respect of, certain other land which is not his/her own. Beneficial enjoyment, for which the right of dominant servitude is created, includes possible convenience, remote advantage and a mere amenity.

e) The easement right holder is called the 'dominant owner' and his/her land as the 'dominant heritage'. The owner of the other land on which liability is to be imposed is called the 'servient owner' and his/her land the 'servient land'.

[35] Black's Law Dictionary (7th Edition) B.A. Garner.

13.2 Kinds of Easements

The following kinds of easements are well recognised and commonly understood:

i. Positive easement: it gives a dominant owner the right to do an act on servient heritage;

ii. Negative easement: it gives a dominant owner the right to prevent the servient owner from doing an act on the servient heritage;

iii. Easement of necessity: it is such a right without which it would not be possible for the dominant owner to beneficially enjoy dominant heritage; and

iv. Limited Easement: it is such an easement, which is limited by time, subject to interruption, for a particular purpose or exercisable only at a particular time.

13.3 Imposition, Acquisition and Transfer of Easements

a) An owner of a property can impose an easement on his/her property. However, such an easement should not lessen the utility of an existing easement. Even a lessee of a property can create easement but in case of lessee, the liability imposed cannot last longer than the period of lease. A lessor or a mortgagor can impose easement on leased or mortgaged property, but such imposition should not derogate from the rights of the lessee or mortgagee.

b) The owner, co-owner or any other person in possession of an immovable property may acquire an easement right for beneficial enjoyment of such property.

Normal rights of the easement in practice are:

i. Access and use of light;

ii. Access and use of air;

iii. Artificial support from a piece of land or from things affixed to such land; and

iv. Right of way etc.

Such right of easement may be acquired if it is peacefully and without interruption enjoyed by a claimant for a period of 20 years. Such an easement may also be acquired under a local custom. An easement can also be acquired by way of an agreement and it is subject to the provisions of such an agreement.

13.4 Transfer of the Right of Easement

a) Right of easement is attached to a property and the owner may claim it because of being in possession of such property. Therefore, the right of easement transfers with the transfer of such property from one person to another.

b) Where the right of easement is necessary for enjoyment of the transferred property, the right will pass to the transferee automatically unless some other understanding is put in place by the parties or is implied at the time of transfer.

13.5 Incidents of Easements

a) The easement right shall be exercised in such a manner and at such a time that it is least burdensome for the other (servient) owner. The exercise of easement can be confined to a determinate part of the property. The owner may alter the mode and place of enjoying his/her right of easement; however, such alteration should not be additionally burdensome for the other owner and should not be done unnecessarily. (Section 24)[36]

b) While a holder of easement right is allowed to do such acts which are necessary for securing enjoyment of his/her right of easement, he/she is obliged to make good any damage which may have been caused to the other owner due to such acts. (Sections 24 and 26)

c) An easement acquired as a matter of necessity is always limited to the extent of such necessity and excessive use of a right of easement can be obstructed by the other (servient) owner. (Sections 28 and 31)

13.6 Disturbance

The beneficiary has the right to enjoy the easement without disturbance. If the right of easement is disturbed, the beneficiary may file a suit for compensation, provided that the disturbance causes substantial damage to the beneficiary. Disturbance of an easement may be restrained by obtaining an injunction. (Sections 32 to 35)

13.7 Extinction, Suspension and Revival

a) A right of easement may be extinguished by operation of law or by act of parties.

[36] All references to 'Section' in this chapter relate to Easement Act, 1882.

By operation of law, easement may be extinguished in the following ways:

i. Easement granted for a limited period, on the expiry of such period;

ii. Where easement is conditional on performance or non-performance of an act, it stands extinguished when such an act is performed or not performed;

iii. If easement were granted for a necessity, it would come to an end as soon as such a necessity comes to an end or as soon as it stops benefitting the beneficiary;

iv. May be altered for giving right of easement at another place; and

v. With the destruction of the easement place or source. (Sections 44-46)

b) By the act of parties, an easement may be extinguished in the following ways:

i. An easement would come to an end if it is abandoned or not enjoyed for a continuous prescribed period of 20 years; (Section 47)

ii. Where easement is granted under a contract, it would cease to exist if the contract is revoked as per the terms of such contract. (Section 39)

13.8 License

a) License is the permission granted by one person (licensor) to another (licenses) to do an act which the latter would not be allowed to do otherwise e.g. A allows B to establish a small shop at the property of A for a limited period or a Government allows a vendor to put up a small advertisement board on a state property. It is different from easement and any other proprietary interest like lease or sale.

Under the Easements Act, the term 'license' is defined in the following words:

"Where one person grants to another, or to a definite number of other persons, a right to do, or continue to do, in or upon the immovable property of the grantor, something which would in the absence of such right be unlawful, and such right does not amount to an easement or an interest in the property, the right is called a license."

b) A licensor can grant a license in the circumstances and to the extent to which he/she possesses transferable interests in the property. The grant may either be express or implied. Once the license is granted, the grantor cannot do any act, which would make the licensed property 'dangerous'. (Sections 53-57)

c) The licensee cannot generally transfer a license unless it is agreed in the terms of grant. A grantor/licensor may revoke a license unless it is coupled with a transfer of a property or if the licensee, under license, executes a work of permanent nature by incurring expenses. Revocation by the licensor may be express or implied. (Sections 60-62)

d) Revocation of a license is deemed if:

i. Grantor ceases to have interest in the licensed property;

ii. Licensee releases it expressly or impliedly;

iii. Licence is granted for a limited period and that period expires;

iv. Licence is conditional upon doing or non-doing of an act and that act is done or not done;

v. Licensed property is destroyed or altered, making it impossible for the licensee to benefit from the license;

vi. Licensee becomes absolute owner of the licensed property;

vii. License is granted for a particular purpose and that purpose stands fulfilled, becomes abandoned or impracticable;

viii. License is obtained by the licensee by virtue of holding an office, character or employment and it ceases to exist; and

ix. License is not used for a continuous period of 20 years and such non-use is not based on a contract between the parties. (Section 62)

e) In case of revocation of a license, the licensee should be given a reasonable time to leave the licensed property and remove his/her belongings from there.

f) In cases where a license is granted for consideration and the licensor revokes the license and evicts licensee before he/she has fully enjoyed the right obtained under the license, the licensee may claim compensation from the licensor. (Sections 63 and 64)

14. When and How State can Acquire Land

14.1 Introduction

The Constitution of Pakistan, 1973 recognizes the fundamental right to acquire, hold and dispose off private property in any part of Pakistan, but law can impose reasonable restrictions in the public interest.

Article 23 of the Constitution reads:

'Every citizen shall have the right to acquire, hold and dispose of property in any part of Pakistan, subject to the Constitution and any reasonable restrictions imposed by law in the public interest.'

a) Article 24, however, says that no person shall be deprived of his/her property except in accordance with law. The article reads:

'No property shall be compulsorily acquired or taken possession of save for a public purpose, and save by the authority of law which provides for compensation therefore and either fixes the amount of compensation or specifies the principles on and the manner in which compensation is to be determined and given.'

b) This article creates some exceptions to this constitutional protection given under Article 23 and allows compulsory acquisition or taking possession of certain properties. The state can compulsorily acquire or take into possession the private property under article 24 in the following cases:

i. For preventing danger to life, property or public health;

ii. If any property which has been acquired by, or comes into the possession of, any person by any unfair means, or in any manner, contrary to law;

iii. Enemy property or evacuee property under any law;

iv. For providing education and medical aid to all or any specified class of citizens;

v. For providing housing and public facilities and services such as roads, water supply, sewerage, gas and electric power to all or any specified class of citizens; and

vi. For providing maintenance to those who, on account of unemployment, sickness, infirmity or old age, are unable to maintain themselves.

c) The basic law, in other words, empowers the state to requisition any private property, temporarily or acquire it permanently for a public purpose under authority of law which provides for compensation and either fixes the amount of such compensation or specifies principles on and the manner in which compensation is to be determined.

d) The right to hold private property is further circumscribed by a set of broad parameters for regulating limits of acquisition laws: To prevent danger to life, acquisition, administration or disposal of enemy property, for preventing danger to life, property or threat to public health, for provision of educational, medical, housing, water supply, roads, sewage, electric supplies, facilities for disadvantaged persons due to unemployment, sickness, infirmity, old age, all in public interest and after payment of due compensation, specified by law.

14.2 Laws relating to Land Acquisition

a) The lands can be acquired under the following two laws:

i. Land Acquisition Act, 1894; and

ii. Capital Development Authority Ordinance, 1960.

b) First and foremost and most commonly invoked law is the 1894 Act that permits acquisition for public purpose, (for railways, schools, hospitals etc.). Land acquisition Act, 1894 designates the Revenue Authorities under respective Boards of Revenue to process the acquisitions. The acquisition may be voluntary or compulsory.

c) Capital Regulation of 1959 was related to lands demarcated for establishment of Islamabad as the permanent Capital. Later, the Regulation was incorporated in the Capital Development Authority Ordinance, 1960. The acquisition is undertaken under the orders of Deputy Commissioner of Capital Development Authority, with one right of appeal before the Chief Commissioner, Islamabad. With effect from January 1996, the compensation rates valid under the 1894 Act were made applicable for the lands acquired in or after 1996.

14.3 Purpose of the Land Acquisition

a) The Act of 1894 only gives a broad, imprecise and inclusive definition of the 'public purpose' for which a land can be acquired.

i. 'Public purpose' implies the use of land for general interest of and advantageous to the public at large and confers some public benefits;

ii. For instance, acquiring land for hospitals, schools, residential colonies, setting-up industry and acquisition of land by public bodies/Government agencies like Railways, Water and Power Development Authority etc; and

iii. The underlying idea is to ensure that the purpose of acquisition is primarily and predominantly to serve the general interest of public at large. Land cannot be acquired for a purpose, which would benefit only a few individuals.

14.4 Process of Land Acquisition/Stages

a) The process of land acquisition is initiated with a decision by a Federal, Provincial or Local Government Department or a public company (called acquiring agency) to execute a 'public purpose' project and such acquiring agency first secures the funds for the land acquisition.

b) The acquiring agency conveys the desire for acquisition to the local District Collector/Deputy Commissioner and deposits the estimated compensation in government treasury in the non-lapsable account of the Collector. The Collector computes this estimated compensation and in his/her final order, it can be changed.

When the Collector decides that the land is needed for any public purpose or for a Company, a notification to that effect is published in the official Gazette, and the Collector gives a public notice of the notification.

After this notification, it is lawful for any authorized officer:

i. To enter upon and survey and take levels of the land;

ii. To dig or bore into the subsoil;

iii. To do all other acts necessary to ascertain whether the land is adapted for such purpose;

iv. To set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon;

v. To mark such levels, boundaries and lines by placing marks and cutting trenches; and

vi. To cut down and clear away any part of any standing crop, fence or jungle where otherwise the survey cannot be completed and the levels taken and the boundaries and lines marked[37].

c) The authorized officer shall at the time of such entry pay to the affectee for all necessary damage to be done and, in case of dispute as to the sufficiency of the amount so paid, he/she shall at once refer the dispute for the decision of the Collector or other Chief Revenue Officer of the District, and such decision shall be final.

d) The Collector then undertakes detailed demarcation of the land proposed for acquisition to ensure amongst others that no parcel is already under any public use, a graveyard, an educational facility or a watercourse or already notified for some other departmental requirement. The law does not accord any priority or distinction between one public use and the other, except perhaps for defence needs.

e) The Collector shall then give public notice that the Government intends to take possession of the particular land, and that claims to compensation for and the objections about the measurement of the land may be made to him/her.

f) In case immediate possession is deemed necessary by the acquiring department and the Collector, an additional Gazette notification by the Divisional Commissioner is required that obligates15% extra payments to the owner.

g) The Collector enquires into the objections (if any) which any person interested may have made about the measurements and the value of the land and then he/she makes an award of: (i) the actual area of the land; (ii) the compensation which in his/her opinion should be allowed for the land; and (iii) the apportionment of the compensation among all the relevant persons. This is called 'Award' and it is final and conclusive.

h) In case, the acquiring agency is unable to discharge its financial obligations in full, or abandons the plan, the acquisition may be dropped in full or partly as per public exigencies.

[37] Section 4, Land Acquisition Act, 1894.

14.5 Reference to Civil Court

a) If any affected person does not accept the Award, he/she may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Civil Court about his/her objection to the measurement of the land, the amount of the compensation, the person to whom it is payable, and the apportionment of the compensation among the persons interested. The application shall state the grounds on which objection to the award is taken.

The Collector shall forward the reference to the Court detailing:

i. Situation and extent of the land, with particulars of any trees, building or standing crops thereon;

ii. Names of the persons whom he/she has reason to think have an interest in such land;

iii. Amount awarded for damages and paid; and

iv. Grounds on which the amount of compensation was determined[38].

14.6 Factors for determination of compensation

The Collector or the Court, if the matter is referred to it, has to take into account the following factors for determining the amount of compensation for land acquisition[39]:

i. Market value of land at the time of issuance of notification for land acquisition;

ii. In cases of compulsory acquisition, an additional amount equal to 15% of the market value of land;

iii. Damage to trees or standing crops on the land being acquired;

iv. Damage caused to the person having an interest in the land being acquired and any adjacent land by severing of the former from the latter;

v. Damage caused to other moveable or immoveable property or earnings of the person whose land is being acquired;

[38] Sections 18, 19 of Land Acquisition Act, 1894.

[39] Section 23 of Land Acquisition Act, 1894.

vi. If the person having an interest in the land being acquired is compelled to change his/her place of residence or business due to acquisition and has incurred some costs due to such a change; and

vii. Damage sustained in the form of diminishing of profits of the person having an interest in the land being acquired, after publication of notification and before possession is taken.

The Collector and the Court shall not take into consideration the following factors while determining compensation of land[40]:

i. The degree of urgency in acquiring land;

ii. Disinclination of the person having an interest in land to part with it;

iii. Damage sustained by an interested person due to an act of another person;

iv. Any damage likely to be caused to the land after publication of declaration of acquisition or due to the use to which the land will be put;

v. Any likely increase in the value of land due to the use to which it will be put after acquisition;

vi. Any likely increase in the value of another piece of land owned by the person who is also the owner of the land being acquired; and

vii. Commencement of any outlay or improvements on the acquired land or its disposal without Collector's sanction after the preliminary notification for acquisition by the Collector.

[40] Section 24 of the Land Acquisition Act, 1894.

15. Salient Features of Land Reforms

a) Introduction

i. Since the creation of the country, various schemes of 'Land Reforms' have been introduced from time to time.

- Land reforms aim at improving the system of tenancy, consolidation of fragmented land holdings, colonization of new lands and restoration of lands to the rightful owners or possessors; and
- Thus, the overall objective of the land reforms has been to make the use of land more equitable and to pave the way for organised land development.

ii. The major land reforms for 'distribution of land' have been dealt with under the Land Reforms laws of 1959, 1972 and 1977. The land was surrendered to the Government under these reforms or resumed by the Government from private owners of the lands for re-distribution to the existing tenants. The regulations introduced under these three land reforms progressively imposed restrictions on maximum land ownership and also introduced equitable treatment of any resumed land by giving it to the occupant tenants, small farmers or the ones who do not own any land at all.

b) Land Reforms 1959

i. Just after the creation of Pakistan various committees were constituted to deal with the issue of land reforms but the first actual Land Reforms were introduced through Martial Law Regulation No. 64 and became effective on February 7, 1959.

ii. The 1959 Reforms placed a ceiling on private ownership of land. It was 500 acres for irrigated land and 1,000 acres for un-irrigated land. The ceiling was applicable on individual basis and not on family holdings.

iii. However, to cater for different qualities of lands as per their potential, an exception was made by allowing an individual to keep land in excess of the above-mentioned ceiling if the Produce Index Unit (PIU) of his/her entire holding was 36,000. PIU represents the gross value of output of land on per acre basis. The reason for providing this exception was that the quality of land,

in terms of productivity, is different at different places and owner of lands of inferior quality will be put to a disadvantage if the ceiling is applied across the board. The PIU introduced in 1959 were based on revenue settlements before 1947.

iv. Another exception was made for orchards and studs etc., which were not to be included for the purposes of calculating the ceiling.

v. Economic holdings and subsistence holdings of 50 acres and 12.5 acres respectively were proposed for consolidation of various fragmented holdings.

vi The landowners who surrendered their land were given some monetary compensation by the Government[41].

vii. The occupancy tenants (tenants that were there since ages) were made eligible for permanent proprietary rights of the land they occupied.

viii. Strict measures were introduced for securing tenancy rights and preventing acts which would reduce a holding to less than a prescribed size of 50 acres and 12.5 acres except for residential needs.

ix. Measures for credit facilities, research and training, cooperatives etc. for agriculture were introduced.

x. Choice for surrendering of the land which was in excess of the prescribed limits was voluntary. Most of the land thus surrendered by big landholders under the 1959 Land Reforms was uncultivated/un-irrigated land.

xi. Total area of land resumed by the government under1959 Reforms was 2.5 million acres. It constituted almost 4.5% of the total cultivable land in the country. Out of this 2.3 million was distributed amongst 183,271 tenants and small landowners.

xii. After these Reforms, less than 8.5% landowners controlled more than 42% of the agricultural land as against 1% in 1947.

[41] Hussain, A, (1982) 'Pakistan: Land Reforms Reconsidered' citing M, H, Khan (1981).

c) Land Reforms 1972

i. The second Land Reforms[42] were introduced through Martial Law Regulation No. 115 of 1972 though the civilian Government issued it.

Salient features of 1972 Reforms are:

a) Ceiling for individual landholder was lowered down to 150 acres and 300 acres for irrigated and un-irrigated lands respectively;

b) Value of PIU for the ceiling was also reduced from 36,000 to 12,000;

c) An additional 2,000 PIU was allowed for owners of tractors and tube wells;

d) No compensation to land owners for surrendering their lands;

e) Earlier exemptions made for orchards and stud farms etc. were abolished;

f) Actual ceiling was 466 acres in Punjab and 560 acres in Sindh due to some exceptions made to the ceiling of landholding; and

g) Area of land resumed by government was only 0.6 million acres.

d) Jagirdaari

- In 1976 jagirs (lands given by the state to local influential) were abolished and creation of new jagirs was forbidden throughout Pakistan, though it had already been done in Punjab and the North West Frontier Province (now Khyber-Pakhtunkhwa) in1950; and
- In Baluchistan, the system of placing land of tribesmen at the service of tribal chiefs (sardars) was also abolished and such lands (called Tuman land) were given back to their original owners.

[42] Khan, S, S, (2010) 'Land Reforms – History, Legal Challenges and how Shariat Courts abolished them', available at <http://secularpakistan.wordpress.com/2010/09/23/land-reforms-history-legal-challenges-and-how-shariat-courts-abolished-them/>, viewed on 20 November, 2011.

e) Land Reforms 1977

i. The third Land Reforms were introduced through the Land Reforms Act (II of 1977) passed by the Parliament.

ii. Under these Reforms, the ceiling was further lowered down to 100 acres for irrigated land and 200 acres of un-irrigated land and it also included the share in shamilat (common village land).

iii. Individual landholding was also subjected to a ceiling of 8,000 PIU of land, which was to be calculated on the basis of the type of soil as noted in the kharif (crop season from autumn to winter) revenue records of 1977.

iv. The Land Reforms Act of 1977 underwent two amendments in 1979.

(a) The first amendment provided that in case of lease of surrendered land by the provincial government, the person who has surrendered the property would have the first right to get the land on the lease; and

(b) The second amendment allowed the Federal Government to exempt educational institutions and cooperative farming societies from the scope of the Act.

f) Qazalbash Waqf Case and the Land Reforms, 1989

I. This case is very important in the history of the land reforms in Pakistan. Qazalbash Waqf was a charitable trust, which lost large parcels of lands due to the land reforms. The Waqf challenged the Land Reforms before the Federal Shariat Court[43] and was later joined by dozens of petitioners. The Federal Shariat Court heard these petitions and declined to declare any provisions of the land reform laws invalid or against the injunctions of Islam.

ii. The Federal Shariat Court's judgement was challenged before the Shariat Appellate Bench of the Supreme Court of Pakistan in the case Qazalbash Waqf versus Chief Land Commissioner, Punjab and others reported as PLD 1990 Supreme Court 99. This case has significantly affected the Land Reforms process in Pakistan.

[43] The Federal Shariat Court is a constitutional court established under Article 203 of the Constitution of Pakistan and it has the extraordinary power to declare any law against the Quran and the Sunnah.

iii. The Shariat Appellate Bench of the Supreme Court of Pakistan in a majority judgement declared various provisions of Land Reforms as un-Islamic. The court observed that individual property rights in Islam are guaranteed and cannot be interfered with.

Salient features of decision in Qazalbash Waqf Case are:

- In Islam, there are no restrictions on ceiling of land owned by an individual;
- State cannot permanently prohibit something, which is expressly allowed under Shariah. Therefore, ceiling of maximum land holdings under Land Reforms is repugnant to Islam;
- Forceful acquisition of citizens' private properties may only be allowed if state is facing extraordinary circumstances;
- If state wants to acquire property of a citizen by force, it has to compensate owner for that and such compensation should be equal to market value of property;
- State can compulsorily require citizens to spend certain surplus resources on poor people; however, such compulsory requirement should not be violative of the requirements mentioned in the Quran and Sunnah;
- Compulsory surrender of property under land reforms is against provisions of Islam and is illegal; and
- Property subjected to a Waqf is actually dedicated in name of God for welfare of people and, therefore, state cannot interfere with its ownership and possession.

iv. In later judgements, the Supreme Court of Pakistan has declared that if a 'decisive' step has been taken in application of the land reforms laws on a particular land, then that property shall be subject to the land reforms, but if still no decisive action has been taken with reference to a particular land, then that land is not subject to the land reforms in the light of the Qazalbash Waqf Case.

15. Glossary of Terms

1. **Abadi:** Inhabited Site of Village.
2. **Abi:** Watered by lift from tanks, pool or streams.
3. **Assigned:** Which could normally be resumed by the ruler.
4. **Banjar Kham:** Land, which has remained unsown for 4 to 11 successive harvests.
5. **Batali Rent:** Taken by division of produce.
6. **Banjar Jadeed:** Cultivatable land which has not been cultivated for four consecutive crops.
7. **Banjar Qadeem:** Land which has not been cultivated for eight consecutive crops.
8. **Barani:** Rain fed.
9. **Berun Line:** Outside of the demarcated forest. Line is fixed by erecting pillars of stone and masonry.
10. **Chahi:** Irrigated by a well.
11. **Charsala:** The revised edition of the record of rights of a village/estate, prepared once in every 4 years to update Jamabandi, Shajra Kishtwar and Shajra Nasab.
12. **Deh:** Village or estate.
13. **Demarcated forests:** Forest land or waste land under the control of the Forest Department of which boundaries have already been demarcated by means of pillars of stone or masonry.
14. **Farad:** A copy of land record.
15. **Farm Land:** Is almost entirely private-owned land, except in the case of 'Najaiz Nautor' or illegally encroached and cultivated state land.
16. **Ghahcharaee:** The grazing of cattle, sheep and other livestock.
17. **Ghair Mumkin:** Is uncultivated land such as bed of a nullah, road graveyard etc.
18. **Girdawar:** Revenue official who supervises the work of three or more Patwaris in his halqa (Circle).

19. **Girdawari:** Means periodical crop inspection, carried out usually twice a year by the patwari to verify the nature of crop, ownership, if people actual have possession of land etc.
20. **Granted:** That which could normally not be resumed, just as a gift under Muslim Law cannot be revoked after delivery of possession.
21. **Grazing Land:** According to almost all Wajib-ul-Arz the village community has time-honored right to graze its cattle and flocks in state-owned forests, unless any part is closed for regeneration purposes. In every village there is a common land or community land or Shamilat which is set apart for purpose of pasturage, graveyard, drinking of water by men or cattle. This land is called grazing land.
22. **Hail:** Is the best kind, by virtue of its proximity to the 'abadi' (residential houses).
23. **Jama Bandi:** Record of Rights.
24. **Jangal:** Uncultivated land covered with trees.
25. **Jinswar:** Return of Crops.
26. **Jareeb Kash:** Hired laborer or private person provided by those land-owners who handles the Jareeb during measurement of land in settlement operations.
27. **Jareeb:** An iron chain used to measure the land during settlement of land.
28. **Kaap:** Grassland used, because of its steep slope or rugged nature.
29. **Kanungo:** Supervisor of Patwaries.
30. **Karam:** A unit of linear measurement, equal to 5 feet and 6 inches.
31. **Khali:** Not under crop.
32. **Khasra Girdawari:** Crop inspection register.
33. **Khata/Khatuni:** The term holding is known as Khewat and tenant's holding as khatuni. The term is also known as Khata.
34. **Khasara No:** A portion of land of which area is separately entered under indicative number in the record of rights.
35. **Khasra:** List of village fields in a village.
36. **Khalsa Land:** Un-encumbered land "pure" or "free" undisputedly used in reference to crown or state owned land.

37. **Kharaba:** Is apportion of cultivated land where corps have been damaged or destroyed by hailstorm, floods, drought or any other natural disaster.
38. **Kharif:** Autumn crop, (Fasal-e-Kharif) this season exists from July to September to February .
39. **Khud Kasht:** Land under the cultivation of the owner himself.
40. **Lambardar:** Village headman who was responsible for collection of land revenue and general assistance to the revenue administration. This has now been abolished in AJ & K.
41. **Latha:** Tracing cloth on which a map of the fields in a village is traced in black ink and number of fields and length of sides given in red ink. This is usually prepared at the time of settlement.
42. **Mahal:** A village or estate for which a separate Record-of-Rights has been prepared.
43. **Maira (Miani) Awwal/Waryal Awwal:** Is the land clear of pebbles and sand.
44. **Maira (Miani) Daum/Waryal Daum:** May have little pebbles and sand or mixture of both.
45. **Malguzar:** Included a tenant-at-will holding direct under the state and paying land revenue to it without any intermediary like a landlord.
46. **Malia:** Land revenue.
47. **Malkiat:** A share or portion of an estate held by one land owner or jointly by two or more land owners.
48. **Masavi:** Is the name of the field map or Shajra Kishtwar prepared on a special type of thick paper, with an underlining of muslin cloth.
49. **Mauroosi:** Literally hereditary, but is generally used in reference to occupancy tenants whose rights are heritable and even saleable with the consent of the landlord.
50. **Mauza:** A village, estate, mahal or deh.
51. **Misal-e-Haqqiat:** Construction of record-of-rights "Misal-e-Haqqiat" assessment of land revenue.
52. **Mutation:** The process of sanctioning as change in land papers, especially Jamabandi. New person who acquire right of land recorded instead of the former right holder.

53. **Muzara:** A tenant.
54. **Nahri:** Irrigated by canal or water channel.
55. **Nautor Kuninda:** A person who has brought state-owned land under cultivation.
56. **Nautor:** Khalsa land brought under cultivation.
57. **Non-Khalsa means Land:** Distinguished from land which had been assigned or granted to individuals by the ruler.
58. **Patwari:** Village register and accountant.
59. **Private forests:** Either belong to individuals or the village community on account of their Shamilat rights. Owners of private forests cannot sell their trees of at least 24" diameter standing on the ground.
60. **Rabi:** Spring crop, (Fasal-e-Rabi). This season exists from March to August.
61. **Roznamcha:** Diary.
62. **Shajra Nasab:** The genealogical tree of the landowners in a village, prepared at the time of settlement. Updated in Charsala after every four years, it is a mandatory part of the Record-of-Rights.
63. **Shamilat:** Is Khalsa land, given after the sanctioning of mutation, to the village community for both common purposes and individual possession or cultivation. There are three types of Shamilat recorded in the Record-of-Rights
64. **Tatima Shajra:** A revised map of any field in consequences of partition, transfer, inheritance etc.
65. **Tenants:** A person who holds land under another person, and is, or but for a special contract would be, liable to pay rent for that land to that other person, and includes the predecessors and successors-in-interest of such person, but does not include:
    i. A mortgagee of the rights of a land-owner;
    ii. A person to whom a holding has been transferred, or an estate or holding has been left in farm, under the provisions of this Act, for the recovery of an arrear of land-revenue or of a sum recoverable as such an arrear; and
    iii. A person who takes from Government a lease of unoccupied land for the purpose of sub-letting it.

66. **Thanghar (Rakkar):** Is relatively unproductive soil, with considerable admixture of stones, pebbles and sand.

67. **Un-demarcated forests:** All forest land and waste land (other than the demarcated forests) or such land under the management and control of Revenue Department and not appropriated for any purpose.

68. **Wajib-ul-Arz:** Is a document, prepared at the time of settlement, stating various customary rights and liabilities of landowners and other members of the village community interest and viz-a-vis the state.

Note: Some terms explained in this Glossary have been used in this Guide while some are not used here but have been added here as these are usually used in documents relating to the land rights in Pakistan.

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